

1 **“PART B—ASSISTANCE FOR EDUCATION OF ALL**
2 **CHILDREN WITH DISABILITIES**

3 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**
4 **AUTHORIZATION OF APPROPRIATIONS.**

5 “(a) GRANTS TO STATES.—

6 “(1) PURPOSE OF GRANTS.—The Secretary
7 shall make grants to States, outlying areas, and
8 freely associated States, and provide funds to the
9 Secretary of the Interior, to assist them to provide
10 special education and related services to children
11 with disabilities in accordance with this part.

12 “(2) MAXIMUM AMOUNT.—The maximum
13 amount of the grant a State may receive under this
14 section—

15 “(A) for fiscal years 2005 and 2006 is—

16 “(i) the number of children with dis-
17 abilities in the State who are receiving spe-
18 cial education and related services—

19 “(I) aged 3 through 5 if the
20 State is eligible for a grant under sec-
21 tion 619; and

22 “(II) aged 6 through 21; multi-
23 plied by

24 “(ii) 40 percent of the average per-
25 pupil expenditure in public elementary

1 schools and secondary schools in the
2 United States; and

3 “(B) for fiscal year 2007 and subsequent
4 fiscal years is—

5 “(i) the number of children with dis-
6 abilities in the 2004–2005 school year in
7 the State who received special education
8 and related services—

9 “(I) aged 3 through 5 if the
10 State is eligible for a grant under sec-
11 tion 619; and

12 “(II) aged 6 through 21; multi-
13 plied by

14 “(ii) 40 percent of the average per-
15 pupil expenditure in public elementary
16 schools and secondary schools in the
17 United States; adjusted by

18 “(iii) the rate of annual change in the
19 sum of—

20 “(I) 85 percent of such State’s
21 population described in subsection
22 (d)(3)(A)(i)(II); and

23 “(II) 15 percent of such State’s
24 population described in subsection
25 (d)(3)(A)(i)(III).

1 “(b) OUTLYING AREAS AND FREELY ASSOCIATED
2 STATES; SECRETARY OF THE INTERIOR.—

3 “(1) OUTLYING AREAS AND FREELY ASSOCI-
4 ATED STATES.—

5 “(A) FUNDS RESERVED.—From the
6 amount appropriated for any fiscal year under
7 subsection (i), the Secretary shall reserve not
8 more than 1 percent, which shall be used—

9 “(i) to provide assistance to the out-
10 lying areas in accordance with their respec-
11 tive populations of individuals aged 3
12 through 21; and

13 “(ii) to provide each freely associated
14 State a grant in the amount that such
15 freely associated State received for fiscal
16 year 2003 under this part, but only if the
17 freely associated State meets the applicable
18 requirements of this part, as well as the re-
19 quirements of section 611(b)(2)(C) as such
20 section was in effect on the day before the
21 date of enactment of the Individuals with
22 Disabilities Education Improvement Act of
23 2004.

24 “(B) SPECIAL RULE.—The provisions of
25 Public Law 95–134, permitting the consolida-

1 tion of grants by the outlying areas, shall not
2 apply to funds provided to the outlying areas or
3 the freely associated States under this section.

4 “(C) DEFINITION.—In this paragraph, the
5 term ‘freely associated States’ means the Re-
6 public of the Marshall Islands, the Federated
7 States of Micronesia, and the Republic of
8 Palau.

9 “(2) SECRETARY OF THE INTERIOR.—From the
10 amount appropriated for any fiscal year under sub-
11 section (i), the Secretary shall reserve 1.226 percent
12 to provide assistance to the Secretary of the Interior
13 in accordance with subsection (h).

14 “(c) TECHNICAL ASSISTANCE.—

15 “(1) IN GENERAL.—The Secretary may reserve
16 not more than $\frac{1}{2}$ of 1 percent of the amounts ap-
17 propriated under this part for each fiscal year to
18 provide technical assistance activities authorized
19 under section 616(i).

20 “(2) MAXIMUM AMOUNT.—The maximum
21 amount the Secretary may reserve under paragraph
22 (1) for any fiscal year is \$25,000,000, cumulatively
23 adjusted by the rate of inflation as measured by the
24 percentage increase, if any, from the preceding fiscal
25 year in the Consumer Price Index For All Urban

1 Consumers, published by the Bureau of Labor Sta-
2 tistics of the Department of Labor.

3 “(d) ALLOCATIONS TO STATES.—

4 “(1) IN GENERAL.—After reserving funds for
5 technical assistance, and for payments to the out-
6 lying areas, the freely associated States, and the
7 Secretary of the Interior under subsections (b) and
8 (c) for a fiscal year, the Secretary shall allocate the
9 remaining amount among the States in accordance
10 with this subsection.

11 “(2) SPECIAL RULE FOR USE OF FISCAL YEAR
12 1999 AMOUNT.—If a State received any funds under
13 this section for fiscal year 1999 on the basis of chil-
14 dren aged 3 through 5, but does not make a free ap-
15 propriate public education available to all children
16 with disabilities aged 3 through 5 in the State in
17 any subsequent fiscal year, the Secretary shall com-
18 pute the State’s amount for fiscal year 1999, solely
19 for the purpose of calculating the State’s allocation
20 in that subsequent year under paragraph (3) or (4),
21 by subtracting the amount allocated to the State for
22 fiscal year 1999 on the basis of those children.

23 “(3) INCREASE IN FUNDS.—If the amount
24 available for allocations to States under paragraph
25 (1) for a fiscal year is equal to or greater than the

1 amount allocated to the States under this paragraph
2 for the preceding fiscal year, those allocations shall
3 be calculated as follows:

4 “(A) ALLOCATION OF INCREASE.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in subparagraph (B), the Secretary
7 shall allocate for the fiscal year—

8 “(I) to each State the amount
9 the State received under this section
10 for fiscal year 1999;

11 “(II) 85 percent of any remain-
12 ing funds to States on the basis of the
13 States’ relative populations of children
14 aged 3 through 21 who are of the
15 same age as children with disabilities
16 for whom the State ensures the avail-
17 ability of a free appropriate public
18 education under this part; and

19 “(III) 15 percent of those re-
20 maining funds to States on the basis
21 of the States’ relative populations of
22 children described in subclause (II)
23 who are living in poverty.

24 “(ii) DATA.—For the purpose of mak-
25 ing grants under this paragraph, the Sec-

1 retary shall use the most recent population
2 data, including data on children living in
3 poverty, that are available and satisfactory
4 to the Secretary.

5 “(B) LIMITATIONS.—Notwithstanding sub-
6 paragraph (A), allocations under this paragraph
7 shall be subject to the following:

8 “(i) PRECEDING YEAR ALLOCATION.—
9 No State’s allocation shall be less than its
10 allocation under this section for the pre-
11 ceding fiscal year.

12 “(ii) MINIMUM.—No State’s allocation
13 shall be less than the greatest of—

14 “(I) the sum of—

15 “(aa) the amount the State
16 received under this section for
17 fiscal year 1999; and

18 “(bb) $\frac{1}{3}$ of 1 percent of the
19 amount by which the amount ap-
20 propriated under subsection (i)
21 for the fiscal year exceeds the
22 amount appropriated for this sec-
23 tion for fiscal year 1999;

24 “(II) the sum of—

1 “(aa) the amount the State
2 received under this section for
3 the preceding fiscal year; and

4 “(bb) that amount multi-
5 plied by the percentage by which
6 the increase in the funds appro-
7 priated for this section from the
8 preceding fiscal year exceeds 1.5
9 percent; or

10 “(III) the sum of—

11 “(aa) the amount the State
12 received under this section for
13 the preceding fiscal year; and

14 “(bb) that amount multi-
15 plied by 90 percent of the per-
16 centage increase in the amount
17 appropriated for this section
18 from the preceding fiscal year.

19 “(iii) MAXIMUM.—Notwithstanding
20 clause (ii), no State’s allocation under this
21 paragraph shall exceed the sum of—

22 “(I) the amount the State re-
23 ceived under this section for the pre-
24 ceding fiscal year; and

1 “(II) that amount multiplied by
2 the sum of 1.5 percent and the per-
3 centage increase in the amount appro-
4 priated under this section from the
5 preceding fiscal year.

6 “(C) RATABLE REDUCTION.—If the
7 amount available for allocations under this
8 paragraph is insufficient to pay those alloca-
9 tions in full, those allocations shall be ratably
10 reduced, subject to subparagraph (B)(i).

11 “(4) DECREASE IN FUNDS.—If the amount
12 available for allocations to States under paragraph
13 (1) for a fiscal year is less than the amount allo-
14 cated to the States under this section for the pre-
15 ceding fiscal year, those allocations shall be cal-
16 culated as follows:

17 “(A) AMOUNTS GREATER THAN FISCAL
18 YEAR 1999 ALLOCATIONS.—If the amount avail-
19 able for allocations is greater than the amount
20 allocated to the States for fiscal year 1999,
21 each State shall be allocated the sum of—

22 “(i) the amount the State received
23 under this section for fiscal year 1999; and

24 “(ii) an amount that bears the same
25 relation to any remaining funds as the in-

1 crease the State received under this section
2 for the preceding fiscal year over fiscal
3 year 1999 bears to the total of all such in-
4 creases for all States.

5 “(B) AMOUNTS EQUAL TO OR LESS THAN
6 FISCAL YEAR 1999 ALLOCATIONS.—

7 “(i) IN GENERAL.—If the amount
8 available for allocations under this para-
9 graph is equal to or less than the amount
10 allocated to the States for fiscal year 1999,
11 each State shall be allocated the amount
12 the State received for fiscal year 1999.

13 “(ii) RATABLE REDUCTION.—If the
14 amount available for allocations under this
15 paragraph is insufficient to make the allo-
16 cations described in clause (i), those alloca-
17 tions shall be ratably reduced.

18 “(e) STATE-LEVEL ACTIVITIES.—

19 “(1) STATE ADMINISTRATION.—

20 “(A) IN GENERAL.—For the purpose of
21 administering this part, including paragraph
22 (3), section 619, and the coordination of activi-
23 ties under this part with, and providing tech-
24 nical assistance to, other programs that provide
25 services to children with disabilities—

1 “(i) each State may reserve for each
2 fiscal year not more than the maximum
3 amount the State was eligible to reserve
4 for State administration under this section
5 for fiscal year 2004 or \$800,000 (adjusted
6 in accordance with subparagraph (B)),
7 whichever is greater; and

8 “(ii) each outlying area may reserve
9 for each fiscal year not more than 5 per-
10 cent of the amount the outlying area re-
11 ceives under subsection (b)(1) for the fiscal
12 year or \$35,000, whichever is greater.

13 “(B) CUMULATIVE ANNUAL ADJUST-
14 MENTS.—For each fiscal year beginning with
15 fiscal year 2005, the Secretary shall cumula-
16 tively adjust—

17 “(i) the maximum amount the State
18 was eligible to reserve for State adminis-
19 tration under this part for fiscal year
20 2004; and

21 “(ii) \$800,000,
22 by the rate of inflation as measured by the per-
23 centage increase, if any, from the preceding fis-
24 cal year in the Consumer Price Index For All

1 Urban Consumers, published by the Bureau of
2 Labor Statistics of the Department of Labor.

3 “(C) CERTIFICATION.—Prior to expendi-
4 ture of funds under this paragraph, the State
5 shall certify to the Secretary that the arrange-
6 ments to establish responsibility for services
7 pursuant to section 612(a)(12)(A) are current.

8 “(D) PART C.—Funds reserved under sub-
9 paragraph (A) may be used for the administra-
10 tion of part C, if the State educational agency
11 is the lead agency for the State under such
12 part.

13 “(2) OTHER STATE-LEVEL ACTIVITIES.—

14 “(A) STATE-LEVEL ACTIVITIES.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (iii), for the purpose of car-
17 rying out State-level activities, each State
18 may reserve for each of the fiscal years
19 2005 and 2006 not more than 10 percent
20 from the amount of the State’s allocation
21 under subsection (d) for each of the fiscal
22 years 2005 and 2006, respectively. For fis-
23 cal year 2007 and each subsequent fiscal
24 year, the State may reserve the maximum
25 amount the State was eligible to reserve

1 under the preceding sentence for fiscal
2 year 2006 (cumulatively adjusted by the
3 rate of inflation as measured by the per-
4 centage increase, if any, from the pre-
5 ceding fiscal year in the Consumer Price
6 Index For All Urban Consumers, published
7 by the Bureau of Labor Statistics of the
8 Department of Labor).

9 “(ii) SMALL STATE ADJUSTMENT.—
10 Notwithstanding clause (i) and except as
11 provided in clause (iii), in the case of a
12 State for which the maximum amount re-
13 served for State administration is not
14 greater than \$850,000, the State may re-
15 serve for the purpose of carrying out
16 State-level activities for each of the fiscal
17 years 2005 and 2006, not more than 10.5
18 percent from the amount of the State’s al-
19 location under subsection (d) for each of
20 the fiscal years 2005 and 2006, respec-
21 tively. For fiscal year 2007 and each sub-
22 sequent fiscal year, such State may reserve
23 the maximum amount the State was eligi-
24 ble to reserve under the preceding sentence
25 for fiscal year 2006 (cumulatively adjusted

1 by the rate of inflation as measured by the
2 percentage increase, if any, from the pre-
3 ceding fiscal year in the Consumer Price
4 Index For All Urban Consumers, published
5 by the Bureau of Labor Statistics of the
6 Department of Labor).

7 “(iii) EXCEPTION.—If a State does
8 not reserve funds under paragraph (3) for
9 a fiscal year, then—

10 “(I) in the case of a State that is
11 not described in clause (ii), for fiscal
12 year 2005 or 2006, clause (i) shall be
13 applied by substituting ‘9.0 percent’
14 for ‘10 percent’; and

15 “(II) in the case of a State that
16 is described in clause (ii), for fiscal
17 year 2005 or 2006, clause (ii) shall be
18 applied by substituting ‘9.5 percent’
19 for ‘10.5 percent’.

20 “(B) REQUIRED ACTIVITIES.—Funds re-
21 served under subparagraph (A) shall be used to
22 carry out the following activities:

23 “(i) For monitoring, enforcement, and
24 complaint investigation.

1 “(ii) To establish and implement the
2 mediation process required by section
3 615(e), including providing for the cost of
4 mediators and support personnel.

5 “(C) AUTHORIZED ACTIVITIES.—Funds re-
6 served under subparagraph (A) may be used to
7 carry out the following activities:

8 “(i) For support and direct services,
9 including technical assistance, personnel
10 preparation, and professional development
11 and training.

12 “(ii) To support paperwork reduction
13 activities, including expanding the use of
14 technology in the IEP process.

15 “(iii) To assist local educational agen-
16 cies in providing positive behavioral inter-
17 ventions and supports and appropriate
18 mental health services for children with
19 disabilities.

20 “(iv) To improve the use of technology
21 in the classroom by children with disabil-
22 ities to enhance learning.

23 “(v) To support the use of technology,
24 including technology with universal design
25 principles and assistive technology devices,

1 to maximize accessibility to the general
2 education curriculum for children with dis-
3 abilities.

4 “(vi) Development and implementa-
5 tion of transition programs, including co-
6 ordination of services with agencies in-
7 volved in supporting the transition of chil-
8 dren with disabilities to postsecondary ac-
9 tivities.

10 “(vii) To assist local educational agen-
11 cies in meeting personnel shortages.

12 “(viii) To support capacity building
13 activities and improve the delivery of serv-
14 ices by local educational agencies to im-
15 prove results for children with disabilities.

16 “(ix) Alternative programming for
17 children with disabilities who have been ex-
18 pelled from school, and services for chil-
19 dren with disabilities in correctional facili-
20 ties, children enrolled in State-operated or
21 State-supported schools, and children with
22 disabilities in charter schools.

23 “(x) To support the development and
24 provision of appropriate accommodations
25 for children with disabilities, or the devel-

1 opment and provision of alternate assess-
2 ments that are valid and reliable for as-
3 sessing the performance of children with
4 disabilities, in accordance with sections
5 1111(b) and 6111 of the Elementary and
6 Secondary Education Act of 1965.

7 “(xi) To provide technical assistance
8 to schools and local educational agencies,
9 and direct services, including supplemental
10 educational services as defined in 1116(e)
11 of the Elementary and Secondary Edu-
12 cation Act of 1965 to children with disabil-
13 ities, in schools or local educational agen-
14 cies identified for improvement under sec-
15 tion 1116 of the Elementary and Sec-
16 ondary Education Act of 1965 on the sole
17 basis of the assessment results of the
18 disaggregated subgroup of children with
19 disabilities, including providing profes-
20 sional development to special and regular
21 education teachers, who teach children
22 with disabilities, based on scientifically
23 based research to improve educational in-
24 struction, in order to improve academic
25 achievement to meet or exceed the objec-

1 tives established by the State under section
2 1111(b)(2)(G) the Elementary and Sec-
3 ondary Education Act of 1965.

4 “(3) LOCAL EDUCATIONAL AGENCY RISK
5 POOL.—

6 “(A) IN GENERAL.—

7 “(i) RESERVATION OF FUNDS.—For
8 the purpose of assisting local educational
9 agencies (including a charter school that is
10 a local educational agency or a consortium
11 of local educational agencies) in addressing
12 the needs of high need children with dis-
13 abilities, each State shall have the option
14 to reserve for each fiscal year 10 percent
15 of the amount of funds the State reserves
16 for State-level activities under paragraph
17 (2)(A)—

18 “(I) to establish and make dis-
19 bursements from the high cost fund to
20 local educational agencies in accord-
21 ance with this paragraph during the
22 first and succeeding fiscal years of the
23 high cost fund; and

24 “(II) to support innovative and
25 effective ways of cost sharing by the

1 State, by a local educational agency,
2 or among a consortium of local edu-
3 cational agencies, as determined by
4 the State in coordination with rep-
5 resentatives from local educational
6 agencies, subject to subparagraph
7 (B)(ii).

8 “(ii) DEFINITION OF LOCAL EDU-
9 CATIONAL AGENCY.—In this paragraph the
10 term ‘local educational agency’ includes a
11 charter school that is a local educational
12 agency, or a consortium of local edu-
13 cational agencies.

14 “(B) LIMITATION ON USES OF FUNDS.—

15 “(i) ESTABLISHMENT OF HIGH COST
16 FUND.—A State shall not use any of the
17 funds the State reserves pursuant to sub-
18 paragraph (A)(i), but may use the funds
19 the State reserves under paragraph (1), to
20 establish and support the high cost fund.

21 “(ii) INNOVATIVE AND EFFECTIVE
22 COST SHARING.—A State shall not use
23 more than 5 percent of the funds the State
24 reserves pursuant to subparagraph (A)(i)
25 for each fiscal year to support innovative

1 and effective ways of cost sharing among
2 consortia of local educational agencies.

3 “(C) STATE PLAN FOR HIGH COST
4 FUND.—

5 “(i) DEFINITION.—The State edu-
6 cational agency shall establish the State’s
7 definition of a high need child with a dis-
8 ability, which definition shall be developed
9 in consultation with local educational agen-
10 cies.

11 “(ii) STATE PLAN.—The State edu-
12 cational agency shall develop, not later
13 than 90 days after the State reserves
14 funds under this paragraph, annually re-
15 view, and amend as necessary, a State plan
16 for the high cost fund. Such State plan
17 shall—

18 “(I) establish, in coordination
19 with representatives from local edu-
20 cational agencies, a definition of a
21 high need child with a disability that,
22 at a minimum—

23 “(aa) addresses the financial
24 impact a high need child with a
25 disability has on the budget of

1 the child's local educational agen-
2 cy; and

3 “(bb) ensures that the cost
4 of the high need child with a dis-
5 ability is greater than 3 times the
6 average per pupil expenditure (as
7 defined in section 9101 of the El-
8 ementary and Secondary Edu-
9 cation Act of 1965) in that State;

10 “(II) establish eligibility criteria
11 for the participation of a local edu-
12 cational agency that, at a minimum,
13 takes into account the number and
14 percentage of high need children with
15 disabilities served by a local edu-
16 cational agency;

17 “(III) develop a funding mecha-
18 nism that provides distributions each
19 fiscal year to local educational agen-
20 cies that meet the criteria developed
21 by the State under subclause (II); and

22 “(IV) establish an annual sched-
23 ule by which the State educational
24 agency shall make its distributions

1 from the high cost fund each fiscal
2 year.

3 “(iii) PUBLIC AVAILABILITY.—The
4 State shall make its final State plan pub-
5 licly available not less than 30 days before
6 the beginning of the school year, including
7 dissemination of such information on the
8 State website.

9 “(D) DISBURSEMENTS FROM THE HIGH
10 COST FUND.—

11 “(i) IN GENERAL.—Each State edu-
12 cational agency shall make all annual dis-
13 bursements from the high cost fund estab-
14 lished under subparagraph (A)(i) in ac-
15 cordance with the State plan published
16 pursuant to subparagraph (C).

17 “(ii) USE OF DISBURSEMENTS.—Each
18 State educational agency shall make an-
19 nual disbursements to eligible local edu-
20 cational agencies in accordance with its
21 State plan under subparagraph (C)(ii).

22 “(iii) APPROPRIATE COSTS.—The
23 costs associated with educating a high need
24 child with a disability under subparagraph
25 (C)(i) are only those costs associated with

1 providing direct special education and re-
2 lated services to such child that are identi-
3 fied in such child's IEP.

4 “(E) LEGAL FEES.—The disbursements
5 under subparagraph (D) shall not support legal
6 fees, court costs, or other costs associated with
7 a cause of action brought on behalf of a child
8 with a disability to ensure a free appropriate
9 public education for such child.

10 “(F) ASSURANCE OF A FREE APPROPRIATE
11 PUBLIC EDUCATION.—Nothing in this para-
12 graph shall be construed—

13 “(i) to limit or condition the right of
14 a child with a disability who is assisted
15 under this part to receive a free appro-
16 priate public education pursuant to section
17 612(a)(1) in the least restrictive environ-
18 ment pursuant to section 612(a)(5); or

19 “(ii) to authorize a State educational
20 agency or local educational agency to es-
21 tablish a limit on what may be spent on
22 the education of a child with a disability.

23 “(G) SPECIAL RULE FOR RISK POOL AND
24 HIGH NEED ASSISTANCE PROGRAMS IN EFFECT
25 AS OF JANUARY 1, 2004.—Notwithstanding the

1 provisions of subparagraphs (A) through (F), a
2 State may use funds reserved pursuant to this
3 paragraph for implementing a placement neu-
4 tral cost sharing and reimbursement program
5 of high need, low incidence, catastrophic, or ex-
6 traordinary aid to local educational agencies
7 that provides services to high need students
8 based on eligibility criteria for such programs
9 that were created not later than January 1,
10 2004, and are currently in operation, if such
11 program serves children that meet the require-
12 ment of the definition of a high need child with
13 a disability as described in subparagraph
14 (C)(ii)(I).

15 “(H) MEDICAID SERVICES NOT AF-
16 FECTED.—Disbursements provided under this
17 paragraph shall not be used to pay costs that
18 otherwise would be reimbursed as medical as-
19 sistance for a child with a disability under the
20 State medicaid program under title XIX of the
21 Social Security Act.

22 “(I) REMAINING FUNDS.—Funds reserved
23 under subparagraph (A) in any fiscal year but
24 not expended in that fiscal year pursuant to
25 subparagraph (D) shall be allocated to local

1 educational agencies for the succeeding fiscal
2 year in the same manner as funds are allocated
3 to local educational agencies under subsection
4 (f) for the succeeding fiscal year.

5 “(4) INAPPLICABILITY OF CERTAIN PROHIBI-
6 TIONS.—A State may use funds the State reserves
7 under paragraphs (1) and (2) without regard to—

8 “(A) the prohibition on commingling of
9 funds in section 612(a)(17)(B); and

10 “(B) the prohibition on supplanting other
11 funds in section 612(a)(17)(C).

12 “(5) REPORT ON USE OF FUNDS.—As part of
13 the information required to be submitted to the Sec-
14 retary under section 612, each State shall annually
15 describe how amounts under this section—

16 “(A) will be used to meet the requirements
17 of this title; and

18 “(B) will be allocated among the activities
19 described in this section to meet State priorities
20 based on input from local educational agencies.

21 “(6) SPECIAL RULE FOR INCREASED FUNDS.—
22 A State may use funds the State reserves under
23 paragraph (1)(A) as a result of inflationary in-
24 creases under paragraph (1)(B) to carry out activi-

1 ties authorized under clause (i), (iii), (vii), or (viii)
2 of paragraph (2)(C).

3 “(7) FLEXIBILITY IN USING FUNDS FOR PART
4 C.—Any State eligible to receive a grant under sec-
5 tion 619 may use funds made available under para-
6 graph (1)(A), subsection (f)(3), or section 619(f)(5)
7 to develop and implement a State policy jointly with
8 the lead agency under part C and the State edu-
9 cational agency to provide early intervention services
10 (which shall include an educational component that
11 promotes school readiness and incorporates
12 preliteracy, language, and numeracy skills) in ac-
13 cordance with part C to children with disabilities
14 who are eligible for services under section 619 and
15 who previously received services under part C until
16 such children enter, or are eligible under State law
17 to enter, kindergarten, or elementary school as ap-
18 propriate.

19 “(f) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
20 CIES.—

21 “(1) SUBGRANTS REQUIRED.—Each State that
22 receives a grant under this section for any fiscal
23 year shall distribute any funds the State does not re-
24 serve under subsection (e) to local educational agen-
25 cies (including public charter schools that operate as

1 local educational agencies) in the State that have es-
2 tablished their eligibility under section 613 for use
3 in accordance with this part.

4 “(2) PROCEDURE FOR ALLOCATIONS TO LOCAL
5 EDUCATIONAL AGENCIES.—For each fiscal year for
6 which funds are allocated to States under subsection
7 (d), each State shall allocate funds under paragraph
8 (1) as follows:

9 “(A) BASE PAYMENTS.—The State shall
10 first award each local educational agency de-
11 scribed in paragraph (1) the amount the local
12 educational agency would have received under
13 this section for fiscal year 1999, if the State
14 had distributed 75 percent of its grant for that
15 year under section 611(d) as section 611(d)
16 was then in effect.

17 “(B) ALLOCATION OF REMAINING
18 FUNDS.—After making allocations under sub-
19 paragraph (A), the State shall—

20 “(i) allocate 85 percent of any re-
21 maining funds to those local educational
22 agencies on the basis of the relative num-
23 bers of children enrolled in public and pri-
24 vate elementary schools and secondary

1 schools within the local educational agen-
2 cy's jurisdiction; and

3 “(ii) allocate 15 percent of those re-
4 maining funds to those local educational
5 agencies in accordance with their relative
6 numbers of children living in poverty, as
7 determined by the State educational agen-
8 cy.

9 “(3) REALLOCATION OF FUNDS.—If a State
10 educational agency determines that a local edu-
11 cational agency is adequately providing a free appro-
12 priate public education to all children with disabil-
13 ities residing in the area served by that local edu-
14 cational agency with State and local funds, the State
15 educational agency may reallocate any portion of the
16 funds under this part that are not needed by that
17 local educational agency to provide a free appro-
18 priate public education to other local educational
19 agencies in the State that are not adequately pro-
20 viding special education and related services to all
21 children with disabilities residing in the areas served
22 by those other local educational agencies.

23 “(g) DEFINITIONS.—In this section:

24 “(1) AVERAGE PER-PUPIL EXPENDITURE IN
25 PUBLIC ELEMENTARY SCHOOLS AND SECONDARY

1 SCHOOLS IN THE UNITED STATES.—The term ‘aver-
2 age per-pupil expenditure in public elementary
3 schools and secondary schools in the United States’
4 means—

5 “(A) without regard to the source of
6 funds—

7 “(i) the aggregate current expendi-
8 tures, during the second fiscal year pre-
9 ceding the fiscal year for which the deter-
10 mination is made (or, if satisfactory data
11 for that year are not available, during the
12 most recent preceding fiscal year for which
13 satisfactory data are available) of all local
14 educational agencies in the 50 States and
15 the District of Columbia; plus

16 “(ii) any direct expenditures by the
17 State for the operation of those agencies;
18 divided by

19 “(B) the aggregate number of children in
20 average daily attendance to whom those agen-
21 cies provided free public education during that
22 preceding year.

23 “(2) STATE.—The term ‘State’ means each of
24 the 50 States, the District of Columbia, and the
25 Commonwealth of Puerto Rico.

1 “(h) USE OF AMOUNTS BY SECRETARY OF THE IN-
2 TERIOR.—

3 “(1) PROVISION OF AMOUNTS FOR ASSIST-
4 ANCE.—

5 “(A) IN GENERAL.—The Secretary of Edu-
6 cation shall provide amounts to the Secretary of
7 the Interior to meet the need for assistance for
8 the education of children with disabilities on
9 reservations aged 5 to 21, inclusive, enrolled in
10 elementary schools and secondary schools for
11 Indian children operated or funded by the Sec-
12 retary of the Interior. The amount of such pay-
13 ment for any fiscal year shall be equal to 80
14 percent of the amount allotted under subsection
15 (b)(2) for that fiscal year. Of the amount de-
16 scribed in the preceding sentence—

17 “(i) 80 percent shall be allocated to
18 such schools by July 1 of that fiscal year;
19 and

20 “(ii) 20 percent shall be allocated to
21 such schools by September 30 of that fiscal
22 year.

23 “(B) CALCULATION OF NUMBER OF CHIL-
24 DREN.—In the case of Indian students aged 3
25 to 5, inclusive, who are enrolled in programs af-

1 filiated with the Bureau of Indian Affairs (re-
2 ferred to in this subsection as the ‘BIA’)
3 schools and that are required by the States in
4 which such schools are located to attain or
5 maintain State accreditation, and which schools
6 have such accreditation prior to the date of en-
7 actment of the Individuals with Disabilities
8 Education Act Amendments of 1991, the school
9 shall be allowed to count those children for the
10 purpose of distribution of the funds provided
11 under this paragraph to the Secretary of the
12 Interior. The Secretary of the Interior shall be
13 responsible for meeting all of the requirements
14 of this part for those children, in accordance
15 with paragraph (2).

16 “(C) ADDITIONAL REQUIREMENT.—With
17 respect to all other children aged 3 to 21, inclu-
18 sive, on reservations, the State educational
19 agency shall be responsible for ensuring that all
20 of the requirements of this part are imple-
21 mented.

22 “(2) SUBMISSION OF INFORMATION.—The Sec-
23 retary of Education may provide the Secretary of
24 the Interior amounts under paragraph (1) for a fis-

1 cal year only if the Secretary of the Interior submits
2 to the Secretary of Education information that—

3 “(A) demonstrates that the Department of
4 the Interior meets the appropriate require-
5 ments, as determined by the Secretary of Edu-
6 cation, of sections 612 (including monitoring
7 and evaluation activities) and 613;

8 “(B) includes a description of how the Sec-
9 retary of the Interior will coordinate the provi-
10 sion of services under this part with local edu-
11 cational agencies, tribes and tribal organiza-
12 tions, and other private and Federal service
13 providers;

14 “(C) includes an assurance that there are
15 public hearings, adequate notice of such hear-
16 ings, and an opportunity for comment afforded
17 to members of tribes, tribal governing bodies,
18 and affected local school boards before the
19 adoption of the policies, programs, and proce-
20 dures related to the requirements described in
21 subparagraph (A);

22 “(D) includes an assurance that the Sec-
23 retary of the Interior will provide such informa-
24 tion as the Secretary of Education may require
25 to comply with section 618;

1 “(E) includes an assurance that the Sec-
2 retary of the Interior and the Secretary of
3 Health and Human Services have entered into
4 a memorandum of agreement, to be provided to
5 the Secretary of Education, for the coordination
6 of services, resources, and personnel between
7 their respective Federal, State, and local offices
8 and with State and local educational agencies
9 and other entities to facilitate the provision of
10 services to Indian children with disabilities re-
11 siding on or near reservations (such agreement
12 shall provide for the apportionment of respon-
13 sibilities and costs, including child find, evalua-
14 tion, diagnosis, remediation or therapeutic
15 measures, and (where appropriate) equipment
16 and medical or personal supplies as needed for
17 a child to remain in school or a program); and

18 “(F) includes an assurance that the De-
19 partment of the Interior will cooperate with the
20 Department of Education in its exercise of
21 monitoring and oversight of this application,
22 and any agreements entered into between the
23 Secretary of the Interior and other entities
24 under this part, and will fulfill its duties under
25 this part.

1 “(3) APPLICABILITY.—The Secretary shall
2 withhold payments under this subsection with re-
3 spect to the information described in paragraph (2)
4 in the same manner as the Secretary withholds pay-
5 ments under section 616(e)(6).

6 “(4) PAYMENTS FOR EDUCATION AND SERVICES
7 FOR INDIAN CHILDREN WITH DISABILITIES AGED 3
8 THROUGH 5.—

9 “(A) IN GENERAL.—With funds appro-
10 priated under subsection (i), the Secretary of
11 Education shall make payments to the Sec-
12 retary of the Interior to be distributed to tribes
13 or tribal organizations (as defined under section
14 4 of the Indian Self-Determination and Edu-
15 cation Assistance Act) or consortia of tribes or
16 tribal organizations to provide for the coordina-
17 tion of assistance for special education and re-
18 lated services for children with disabilities aged
19 3 through 5 on reservations served by elemen-
20 tary schools and secondary schools for Indian
21 children operated or funded by the Department
22 of the Interior. The amount of such payments
23 under subparagraph (B) for any fiscal year
24 shall be equal to 20 percent of the amount al-
25 lotted under subsection (b)(2).

1 “(B) DISTRIBUTION OF FUNDS.—The Sec-
2 retary of the Interior shall distribute the total
3 amount of the payment under subparagraph
4 (A) by allocating to each tribe, tribal organiza-
5 tion, or consortium an amount based on the
6 number of children with disabilities aged 3
7 through 5 residing on reservations as reported
8 annually, divided by the total of those children
9 served by all tribes or tribal organizations.

10 “(C) SUBMISSION OF INFORMATION.—To
11 receive a payment under this paragraph, the
12 tribe or tribal organization shall submit such
13 figures to the Secretary of the Interior as re-
14 quired to determine the amounts to be allocated
15 under subparagraph (B). This information shall
16 be compiled and submitted to the Secretary of
17 Education.

18 “(D) USE OF FUNDS.—The funds received
19 by a tribe or tribal organization shall be used
20 to assist in child find, screening, and other pro-
21 cedures for the early identification of children
22 aged 3 through 5, parent training, and the pro-
23 vision of direct services. These activities may be
24 carried out directly or through contracts or co-
25 operative agreements with the BIA, local edu-

1 cational agencies, and other public or private
2 nonprofit organizations. The tribe or tribal or-
3 ganization is encouraged to involve Indian par-
4 ents in the development and implementation of
5 these activities. The tribe or tribal organization
6 shall, as appropriate, make referrals to local,
7 State, or Federal entities for the provision of
8 services or further diagnosis.

9 “(E) BIENNIAL REPORT.—To be eligible to
10 receive a grant pursuant to subparagraph (A),
11 the tribe or tribal organization shall provide to
12 the Secretary of the Interior a biennial report
13 of activities undertaken under this paragraph,
14 including the number of contracts and coopera-
15 tive agreements entered into, the number of
16 children contacted and receiving services for
17 each year, and the estimated number of chil-
18 dren needing services during the 2 years fol-
19 lowing the year in which the report is made.
20 The Secretary of the Interior shall include a
21 summary of this information on a biennial basis
22 in the report to the Secretary of Education re-
23 quired under this subsection. The Secretary of
24 Education may require any additional informa-
25 tion from the Secretary of the Interior.

1 “(F) PROHIBITIONS.—None of the funds
2 allocated under this paragraph may be used by
3 the Secretary of the Interior for administrative
4 purposes, including child count and the provi-
5 sion of technical assistance.

6 “(5) PLAN FOR COORDINATION OF SERVICES.—
7 The Secretary of the Interior shall develop and im-
8 plement a plan for the coordination of services for
9 all Indian children with disabilities residing on res-
10 ervations covered under this title. Such plan shall
11 provide for the coordination of services benefiting
12 those children from whatever source, including
13 tribes, the Indian Health Service, other BIA divi-
14 sions, and other Federal agencies. In developing the
15 plan, the Secretary of the Interior shall consult with
16 all interested and involved parties. The plan shall be
17 based on the needs of the children and the system
18 best suited for meeting those needs, and may involve
19 the establishment of cooperative agreements between
20 the BIA, other Federal agencies, and other entities.
21 The plan shall also be distributed upon request to
22 States, State educational agencies and local edu-
23 cational agencies, and other agencies providing serv-
24 ices to infants, toddlers, and children with disabil-
25 ities, to tribes, and to other interested parties.

1 “(6) ESTABLISHMENT OF ADVISORY BOARD.—

2 To meet the requirements of section 612(a)(21), the
3 Secretary of the Interior shall establish, under the
4 BIA, an advisory board composed of individuals in-
5 volved in or concerned with the education and provi-
6 sion of services to Indian infants, toddlers, children,
7 and youth with disabilities, including Indians with
8 disabilities, Indian parents or guardians of such chil-
9 dren, teachers, service providers, State and local
10 educational officials, representatives of tribes or trib-
11 al organizations, representatives from State Inter-
12 agency Coordinating Councils under section 641 in
13 States having reservations, and other members rep-
14 resenting the various divisions and entities of the
15 BIA. The chairperson shall be selected by the Sec-
16 retary of the Interior. The advisory board shall—

17 “(A) assist in the coordination of services
18 within the BIA and with other local, State, and
19 Federal agencies in the provision of education
20 for infants, toddlers, and children with disabil-
21 ities;

22 “(B) advise and assist the Secretary of the
23 Interior in the performance of the Secretary of
24 the Interior’s responsibilities described in this
25 subsection;

1 “(C) develop and recommend policies con-
2 cerning effective inter- and intra-agency collabo-
3 ration, including modifications to regulations,
4 and the elimination of barriers to inter- and
5 intra-agency programs and activities;

6 “(D) provide assistance and disseminate
7 information on best practices, effective program
8 coordination strategies, and recommendations
9 for improved early intervention services or edu-
10 cational programming for Indian infants, tod-
11 dlers, and children with disabilities; and

12 “(E) provide assistance in the preparation
13 of information required under paragraph
14 (2)(D).

15 “(7) ANNUAL REPORTS.—

16 “(A) IN GENERAL.—The advisory board
17 established under paragraph (6) shall prepare
18 and submit to the Secretary of the Interior and
19 to Congress an annual report containing a de-
20 scription of the activities of the advisory board
21 for the preceding year.

22 “(B) AVAILABILITY.—The Secretary of the
23 Interior shall make available to the Secretary of
24 Education the report described in subparagraph
25 (A).

1 “(i) AUTHORIZATION OF APPROPRIATIONS.—For the
2 purpose of carrying out this part, other than section 619,
3 there are authorized to be appropriated—

4 “(1) \$12,358,376,571 for fiscal year 2005;

5 “(2) \$14,648,647,143 for fiscal year 2006;

6 “(3) \$16,938,917,714 for fiscal year 2007;

7 “(4) \$19,229,188,286 for fiscal year 2008;

8 “(5) \$21,519,458,857 for fiscal year 2009;

9 “(6) \$23,809,729,429 for fiscal year 2010;

10 “(7) \$26,100,000,000 for fiscal year 2011; and

11 “(8) such sums as may be necessary for fiscal
12 year 2012 and each succeeding fiscal year.

13 **“SEC. 612. STATE ELIGIBILITY.**

14 “(a) IN GENERAL.—A State is eligible for assistance
15 under this part for a fiscal year if the State submits a
16 plan that provides assurances to the Secretary that the
17 State has in effect policies and procedures to ensure that
18 the State meets each of the following conditions:

19 “(1) FREE APPROPRIATE PUBLIC EDU-
20 CATION.—

21 “(A) IN GENERAL.—A free appropriate
22 public education is available to all children with
23 disabilities residing in the State between the
24 ages of 3 and 21, inclusive, including children

1 with disabilities who have been suspended or ex-
2 pelled from school.

3 “(B) LIMITATION.—The obligation to
4 make a free appropriate public education avail-
5 able to all children with disabilities does not
6 apply with respect to children—

7 “(i) aged 3 through 5 and 18 through
8 21 in a State to the extent that its applica-
9 tion to those children would be inconsistent
10 with State law or practice, or the order of
11 any court, respecting the provision of pub-
12 lic education to children in those age
13 ranges; and

14 “(ii) aged 18 through 21 to the extent
15 that State law does not require that special
16 education and related services under this
17 part be provided to children with disabil-
18 ities who, in the educational placement
19 prior to their incarceration in an adult cor-
20 rectional facility—

21 “(I) were not actually identified
22 as being a child with a disability
23 under section 602; or

1 “(II) did not have an individual-
2 ized education program under this
3 part.

4 “(C) STATE FLEXIBILITY.—A State that
5 provides early intervention services in accord-
6 ance with part C to a child who is eligible for
7 services under section 619, is not required to
8 provide such child with a free appropriate pub-
9 lic education.

10 “(2) FULL EDUCATIONAL OPPORTUNITY
11 GOAL.—The State has established a goal of pro-
12 viding full educational opportunity to all children
13 with disabilities and a detailed timetable for accom-
14 plishing that goal.

15 “(3) CHILD FIND.—

16 “(A) IN GENERAL.—All children with dis-
17 abilities residing in the State, including children
18 with disabilities who are homeless children or
19 are wards of the State and children with dis-
20 abilities attending private schools, regardless of
21 the severity of their disabilities, and who are in
22 need of special education and related services,
23 are identified, located, and evaluated and a
24 practical method is developed and implemented
25 to determine which children with disabilities are

1 currently receiving needed special education and
2 related services.

3 “(B) CONSTRUCTION.—Nothing in this
4 title requires that children be classified by their
5 disability so long as each child who has a dis-
6 ability listed in section 602 and who, by reason
7 of that disability, needs special education and
8 related services is regarded as a child with a
9 disability under this part.

10 “(4) INDIVIDUALIZED EDUCATION PROGRAM.—
11 An individualized education program, or an individ-
12 ualized family service plan that meets the require-
13 ments of section 636(d), is developed, reviewed, and
14 revised for each child with a disability in accordance
15 with section 614(d).

16 “(5) LEAST RESTRICTIVE ENVIRONMENT.—

17 “(A) IN GENERAL.—To the maximum ex-
18 tent appropriate, children with disabilities, in-
19 cluding children in public or private institutions
20 or other care facilities, are educated with chil-
21 dren who are not disabled, and special classes,
22 separate schooling, or other removal of children
23 with disabilities from the regular educational
24 environment occurs only when the nature or se-
25 verity of the disability of a child is such that

1 education in regular classes with the use of sup-
2 plementary aids and services cannot be achieved
3 satisfactorily.

4 “(B) ADDITIONAL REQUIREMENT.—

5 “(i) IN GENERAL.—A State funding
6 mechanism shall not result in placements
7 that violate the requirements of subpara-
8 graph (A), and a State shall not use a
9 funding mechanism by which the State dis-
10 tributes funds on the basis of the type of
11 setting in which a child is served that will
12 result in the failure to provide a child with
13 a disability a free appropriate public edu-
14 cation according to the unique needs of the
15 child as described in the child’s IEP.

16 “(ii) ASSURANCE.—If the State does
17 not have policies and procedures to ensure
18 compliance with clause (i), the State shall
19 provide the Secretary an assurance that
20 the State will revise the funding mecha-
21 nism as soon as feasible to ensure that
22 such mechanism does not result in such
23 placements.

24 “(6) PROCEDURAL SAFEGUARDS.—

1 “(A) IN GENERAL.—Children with disabil-
2 ities and their parents are afforded the proce-
3 dural safeguards required by section 615.

4 “(B) ADDITIONAL PROCEDURAL SAFE-
5 GUARDS.—Procedures to ensure that testing
6 and evaluation materials and procedures uti-
7 lized for the purposes of evaluation and place-
8 ment of children with disabilities for services
9 under this title will be selected and adminis-
10 tered so as not to be racially or culturally dis-
11 criminatory. Such materials or procedures shall
12 be provided and administered in the child’s na-
13 tive language or mode of communication, unless
14 it clearly is not feasible to do so, and no single
15 procedure shall be the sole criterion for deter-
16 mining an appropriate educational program for
17 a child.

18 “(7) EVALUATION.—Children with disabilities
19 are evaluated in accordance with subsections (a)
20 through (c) of section 614.

21 “(8) CONFIDENTIALITY.—Agencies in the State
22 comply with section 617(c) (relating to the confiden-
23 tiality of records and information).

24 “(9) TRANSITION FROM PART C TO PRESCHOOL
25 PROGRAMS.—Children participating in early inter-

1 vention programs assisted under part C, and who
2 will participate in preschool programs assisted under
3 this part, experience a smooth and effective transi-
4 tion to those preschool programs in a manner con-
5 sistent with section 637(a)(9). By the third birthday
6 of such a child, an individualized education program
7 or, if consistent with sections 614(d)(2)(B) and
8 636(d), an individualized family service plan, has
9 been developed and is being implemented for the
10 child. The local educational agency will participate in
11 transition planning conferences arranged by the des-
12 ignated lead agency under section 635(a)(10).

13 “(10) CHILDREN IN PRIVATE SCHOOLS.—

14 “(A) CHILDREN ENROLLED IN PRIVATE
15 SCHOOLS BY THEIR PARENTS.—

16 “(i) IN GENERAL.—To the extent con-
17 sistent with the number and location of
18 children with disabilities in the State who
19 are enrolled by their parents in private ele-
20 mentary schools and secondary schools in
21 the school district served by a local edu-
22 cational agency, provision is made for the
23 participation of those children in the pro-
24 gram assisted or carried out under this
25 part by providing for such children special

1 education and related services in accord-
2 ance with the following requirements, un-
3 less the Secretary has arranged for serv-
4 ices to those children under subsection (f):

5 “(I) Amounts to be expended for
6 the provision of those services (includ-
7 ing direct services to parentally placed
8 private school children) by the local
9 educational agency shall be equal to a
10 proportionate amount of Federal
11 funds made available under this part.

12 “(II) In calculating the propor-
13 tionate amount of Federal funds, the
14 local educational agency, after timely
15 and meaningful consultation with rep-
16 resentatives of private schools as de-
17 scribed in clause (iii), shall conduct a
18 thorough and complete child find
19 process to determine the number of
20 parentally placed children with dis-
21 abilities attending private schools lo-
22 cated in the local educational agency.

23 “(III) Such services to parentally
24 placed private school children with
25 disabilities may be provided to the

1 children on the premises of private,
2 including religious, schools, to the ex-
3 tent consistent with law.

4 “(IV) State and local funds may
5 supplement and in no case shall sup-
6 plant the proportionate amount of
7 Federal funds required to be expended
8 under this subparagraph.

9 “(V) Each local educational
10 agency shall maintain in its records
11 and provide to the State educational
12 agency the number of children evalu-
13 ated under this subparagraph, the
14 number of children determined to be
15 children with disabilities under this
16 paragraph, and the number of chil-
17 dren served under this paragraph.

18 “(ii) CHILD FIND REQUIREMENT.—

19 “(I) IN GENERAL.—The require-
20 ments of paragraph (3) (relating to
21 child find) shall apply with respect to
22 children with disabilities in the State
23 who are enrolled in private, including
24 religious, elementary schools and sec-
25 ondary schools.

1 “(II) EQUITABLE PARTICIPA-
2 TION.—The child find process shall be
3 designed to ensure the equitable par-
4 ticipation of parentally placed private
5 school children with disabilities and
6 an accurate count of such children.

7 “(III) ACTIVITIES.—In carrying
8 out this clause, the local educational
9 agency, or where applicable, the State
10 educational agency, shall undertake
11 activities similar to those activities un-
12 dertaken for the agency’s public
13 school children.

14 “(IV) COST.—The cost of car-
15 rying out this clause, including indi-
16 vidual evaluations, may not be consid-
17 ered in determining whether a local
18 educational agency has met its obliga-
19 tions under clause (i).

20 “(V) COMPLETION PERIOD.—
21 Such child find process shall be com-
22 pleted in a time period comparable to
23 that for other students attending pub-
24 lic schools in the local educational
25 agency.

1 “(iii) CONSULTATION.—To ensure
2 timely and meaningful consultation, a local
3 educational agency, or where appropriate,
4 a State educational agency, shall consult
5 with private school representatives and
6 representatives of parents of parentally
7 placed private school children with disabil-
8 ities during the design and development of
9 special education and related services for
10 the children, including regarding—

11 “(I) the child find process and
12 how parentally placed private school
13 children suspected of having a dis-
14 ability can participate equitably, in-
15 cluding how parents, teachers, and
16 private school officials will be in-
17 formed of the process;

18 “(II) the determination of the
19 proportionate amount of Federal
20 funds available to serve parentally
21 placed private school children with
22 disabilities under this subparagraph,
23 including the determination of how
24 the amount was calculated;

1 “(III) the consultation process
2 among the local educational agency,
3 private school officials, and represent-
4 atives of parents of parentally placed
5 private school children with disabil-
6 ities, including how such process will
7 operate throughout the school year to
8 ensure that parentally placed private
9 school children with disabilities identi-
10 fied through the child find process can
11 meaningfully participate in special
12 education and related services;

13 “(IV) how, where, and by whom
14 special education and related services
15 will be provided for parentally placed
16 private school children with disabil-
17 ities, including a discussion of types of
18 services, including direct services and
19 alternate service delivery mechanisms,
20 how such services will be apportioned
21 if funds are insufficient to serve all
22 children, and how and when these de-
23 cisions will be made; and

24 “(V) how, if the local educational
25 agency disagrees with the views of the

1 private school officials on the provi-
2 sion of services or the types of serv-
3 ices, whether provided directly or
4 through a contract, the local edu-
5 cational agency shall provide to the
6 private school officials a written expla-
7 nation of the reasons why the local
8 educational agency chose not to pro-
9 vide services directly or through a
10 contract.

11 “(iv) WRITTEN AFFIRMATION.—When
12 timely and meaningful consultation as re-
13 quired by clause (iii) has occurred, the
14 local educational agency shall obtain a
15 written affirmation signed by the rep-
16 resentatives of participating private
17 schools, and if such representatives do not
18 provide such affirmation within a reason-
19 able period of time, the local educational
20 agency shall forward the documentation of
21 the consultation process to the State edu-
22 cational agency.

23 “(v) COMPLIANCE.—

24 “(I) IN GENERAL.—A private
25 school official shall have the right to

1 submit a complaint to the State edu-
2 cational agency that the local edu-
3 cational agency did not engage in con-
4 sultation that was meaningful and
5 timely, or did not give due consider-
6 ation to the views of the private school
7 official.

8 “(II) PROCEDURE.—If the pri-
9 vate school official wishes to submit a
10 complaint, the official shall provide
11 the basis of the noncompliance with
12 this subparagraph by the local edu-
13 cational agency to the State edu-
14 cational agency, and the local edu-
15 cational agency shall forward the ap-
16 propriate documentation to the State
17 educational agency. If the private
18 school official is dissatisfied with the
19 decision of the State educational
20 agency, such official may submit a
21 complaint to the Secretary by pro-
22 viding the basis of the noncompliance
23 with this subparagraph by the local
24 educational agency to the Secretary,
25 and the State educational agency shall

1 forward the appropriate documenta-
2 tion to the Secretary.

3 “(vi) PROVISION OF EQUITABLE SERV-
4 ICES.—

5 “(I) DIRECTLY OR THROUGH
6 CONTRACTS.—The provision of serv-
7 ices pursuant to this subparagraph
8 shall be provided—

9 “(aa) by employees of a pub-
10 lic agency; or

11 “(bb) through contract by
12 the public agency with an indi-
13 vidual, association, agency, orga-
14 nization, or other entity.

15 “(II) SECULAR, NEUTRAL, NON-
16 IDEOLOGICAL.—Special education and
17 related services provided to parentally
18 placed private school children with
19 disabilities, including materials and
20 equipment, shall be secular, neutral,
21 and nonideological.

22 “(vii) PUBLIC CONTROL OF FUNDS.—
23 The control of funds used to provide spe-
24 cial education and related services under
25 this subparagraph, and title to materials,

1 equipment, and property purchased with
2 those funds, shall be in a public agency for
3 the uses and purposes provided in this
4 title, and a public agency shall administer
5 the funds and property.

6 “(B) CHILDREN PLACED IN, OR REFERRED
7 TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

8 “(i) IN GENERAL.—Children with dis-
9 abilities in private schools and facilities are
10 provided special education and related
11 services, in accordance with an individual-
12 ized education program, at no cost to their
13 parents, if such children are placed in, or
14 referred to, such schools or facilities by the
15 State or appropriate local educational
16 agency as the means of carrying out the
17 requirements of this part or any other ap-
18 plicable law requiring the provision of spe-
19 cial education and related services to all
20 children with disabilities within such State.

21 “(ii) STANDARDS.—In all cases de-
22 scribed in clause (i), the State educational
23 agency shall determine whether such
24 schools and facilities meet standards that
25 apply to State educational agencies and

1 local educational agencies and that chil-
2 dren so served have all the rights the chil-
3 dren would have if served by such agencies.

4 “(C) PAYMENT FOR EDUCATION OF CHIL-
5 DREN ENROLLED IN PRIVATE SCHOOLS WITH-
6 OUT CONSENT OF OR REFERRAL BY THE PUB-
7 LIC AGENCY.—

8 “(i) IN GENERAL.—Subject to sub-
9 paragraph (A), this part does not require
10 a local educational agency to pay for the
11 cost of education, including special edu-
12 cation and related services, of a child with
13 a disability at a private school or facility if
14 that agency made a free appropriate public
15 education available to the child and the
16 parents elected to place the child in such
17 private school or facility.

18 “(ii) REIMBURSEMENT FOR PRIVATE
19 SCHOOL PLACEMENT.—If the parents of a
20 child with a disability, who previously re-
21 ceived special education and related serv-
22 ices under the authority of a public agency,
23 enroll the child in a private elementary
24 school or secondary school without the con-
25 sent of or referral by the public agency, a

1 court or a hearing officer may require the
2 agency to reimburse the parents for the
3 cost of that enrollment if the court or
4 hearing officer finds that the agency had
5 not made a free appropriate public edu-
6 cation available to the child in a timely
7 manner prior to that enrollment.

8 “(iii) LIMITATION ON REIMBURSE-
9 MENT.—The cost of reimbursement de-
10 scribed in clause (ii) may be reduced or
11 denied—

12 “(I) if—

13 “(aa) at the most recent
14 IEP meeting that the parents at-
15 tended prior to removal of the
16 child from the public school, the
17 parents did not inform the IEP
18 Team that they were rejecting
19 the placement proposed by the
20 public agency to provide a free
21 appropriate public education to
22 their child, including stating their
23 concerns and their intent to en-
24 roll their child in a private school
25 at public expense; or

1 “(bb) 10 business days (in-
2 cluding any holidays that occur
3 on a business day) prior to the
4 removal of the child from the
5 public school, the parents did not
6 give written notice to the public
7 agency of the information de-
8 scribed in item (aa);

9 “(II) if, prior to the parents’ re-
10 moval of the child from the public
11 school, the public agency informed the
12 parents, through the notice require-
13 ments described in section 615(b)(3),
14 of its intent to evaluate the child (in-
15 cluding a statement of the purpose of
16 the evaluation that was appropriate
17 and reasonable), but the parents did
18 not make the child available for such
19 evaluation; or

20 “(III) upon a judicial finding of
21 unreasonableness with respect to ac-
22 tions taken by the parents.

23 “(iv) EXCEPTION.—Notwithstanding
24 the notice requirement in clause (iii)(I),
25 the cost of reimbursement—

1 “(I) shall not be reduced or de-
2 nied for failure to provide such notice
3 if—

4 “(aa) the school prevented
5 the parent from providing such
6 notice;

7 “(bb) the parents had not
8 received notice, pursuant to sec-
9 tion 615, of the notice require-
10 ment in clause (iii)(I); or

11 “(cc) compliance with clause
12 (iii)(I) would likely result in
13 physical harm to the child; and

14 “(II) may, in the discretion of a
15 court or a hearing officer, not be re-
16 duced or denied for failure to provide
17 such notice if—

18 “(aa) the parent is illiterate
19 or cannot write in English; or

20 “(bb) compliance with clause
21 (iii)(I) would likely result in seri-
22 ous emotional harm to the child.

23 “(11) STATE EDUCATIONAL AGENCY RESPON-
24 SIBLE FOR GENERAL SUPERVISION.—

1 “(A) IN GENERAL.—The State educational
2 agency is responsible for ensuring that—

3 “(i) the requirements of this part are
4 met;

5 “(ii) all educational programs for chil-
6 dren with disabilities in the State, includ-
7 ing all such programs administered by any
8 other State agency or local agency—

9 “(I) are under the general super-
10 vision of individuals in the State who
11 are responsible for educational pro-
12 grams for children with disabilities;
13 and

14 “(II) meet the educational stand-
15 ards of the State educational agency;
16 and

17 “(iii) in carrying out this part with re-
18 spect to homeless children, the require-
19 ments of subtitle B of title VII of the
20 McKinney-Vento Homeless Assistance Act
21 (42 U.S.C. 11431 et seq.) are met.

22 “(B) LIMITATION.—Subparagraph (A)
23 shall not limit the responsibility of agencies in
24 the State other than the State educational
25 agency to provide, or pay for some or all of the

1 costs of, a free appropriate public education for
2 any child with a disability in the State.

3 “(C) EXCEPTION.—Notwithstanding sub-
4 paragraphs (A) and (B), the Governor (or an-
5 other individual pursuant to State law), con-
6 sistent with State law, may assign to any public
7 agency in the State the responsibility of ensur-
8 ing that the requirements of this part are met
9 with respect to children with disabilities who
10 are convicted as adults under State law and in-
11 carcerated in adult prisons.

12 “(12) OBLIGATIONS RELATED TO AND METH-
13 ODS OF ENSURING SERVICES.—

14 “(A) ESTABLISHING RESPONSIBILITY FOR
15 SERVICES.—The Chief Executive Officer of a
16 State or designee of the officer shall ensure
17 that an interagency agreement or other mecha-
18 nism for interagency coordination is in effect
19 between each public agency described in sub-
20 paragraph (B) and the State educational agen-
21 cy, in order to ensure that all services described
22 in subparagraph (B)(i) that are needed to en-
23 sure a free appropriate public education are
24 provided, including the provision of such serv-
25 ices during the pendency of any dispute under

1 clause (iii). Such agreement or mechanism shall
2 include the following:

3 “(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method
4 for defining, the financial responsibility of
5 each agency for providing services de-
6 scribed in subparagraph (B)(i) to ensure a
7 free appropriate public education to chil-
8 dren with disabilities, provided that the fi-
9 nancial responsibility of each public agency
10 described in subparagraph (B), including
11 the State medicaid agency and other public
12 insurers of children with disabilities, shall
13 precede the financial responsibility of the
14 local educational agency (or the State
15 agency responsible for developing the
16 child’s IEP).

18 “(ii) CONDITIONS AND TERMS OF RE-
19 IMBURSEMENT.—The conditions, terms,
20 and procedures under which a local edu-
21 cational agency shall be reimbursed by
22 other agencies.

23 “(iii) INTERAGENCY DISPUTES.—Pro-
24 cedures for resolving interagency disputes
25 (including procedures under which local

1 educational agencies may initiate pro-
2 ceedings) under the agreement or other
3 mechanism to secure reimbursement from
4 other agencies or otherwise implement the
5 provisions of the agreement or mechanism.

6 “(iv) COORDINATION OF SERVICES
7 PROCEDURES.—Policies and procedures for
8 agencies to determine and identify the
9 interagency coordination responsibilities of
10 each agency to promote the coordination
11 and timely and appropriate delivery of
12 services described in subparagraph (B)(i).

13 “(B) OBLIGATION OF PUBLIC AGENCY.—

14 “(i) IN GENERAL.—If any public
15 agency other than an educational agency is
16 otherwise obligated under Federal or State
17 law, or assigned responsibility under State
18 policy pursuant to subparagraph (A), to
19 provide or pay for any services that are
20 also considered special education or related
21 services (such as, but not limited to, serv-
22 ices described in section 602(1) relating to
23 assistive technology devices, 602(2) relat-
24 ing to assistive technology services,
25 602(26) relating to related services,

1 602(33) relating to supplementary aids
2 and services, and 602(34) relating to tran-
3 sition services) that are necessary for en-
4 suring a free appropriate public education
5 to children with disabilities within the
6 State, such public agency shall fulfill that
7 obligation or responsibility, either directly
8 or through contract or other arrangement
9 pursuant to subparagraph (A) or an agree-
10 ment pursuant to subparagraph (C).

11 “(ii) REIMBURSEMENT FOR SERVICES
12 BY PUBLIC AGENCY.—If a public agency
13 other than an educational agency fails to
14 provide or pay for the special education
15 and related services described in clause (i),
16 the local educational agency (or State
17 agency responsible for developing the
18 child’s IEP) shall provide or pay for such
19 services to the child. Such local educational
20 agency or State agency is authorized to
21 claim reimbursement for the services from
22 the public agency that failed to provide or
23 pay for such services and such public agen-
24 cy shall reimburse the local educational
25 agency or State agency pursuant to the

1 terms of the interagency agreement or
2 other mechanism described in subpara-
3 graph (A)(i) according to the procedures
4 established in such agreement pursuant to
5 subparagraph (A)(ii).

6 “(C) SPECIAL RULE.—The requirements of
7 subparagraph (A) may be met through—

8 “(i) State statute or regulation;

9 “(ii) signed agreements between re-
10 spective agency officials that clearly iden-
11 tify the responsibilities of each agency re-
12 lating to the provision of services; or

13 “(iii) other appropriate written meth-
14 ods as determined by the Chief Executive
15 Officer of the State or designee of the offi-
16 cer and approved by the Secretary.

17 “(13) PROCEDURAL REQUIREMENTS RELATING
18 TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—
19 The State educational agency will not make a final
20 determination that a local educational agency is not
21 eligible for assistance under this part without first
22 affording that agency reasonable notice and an op-
23 portunity for a hearing.

24 “(14) PERSONNEL QUALIFICATIONS.—

1 “(A) IN GENERAL.—The State educational
2 agency has established and maintains qualifica-
3 tions to ensure that personnel necessary to
4 carry out this part are appropriately and ade-
5 quately prepared and trained, including that
6 those personnel have the content knowledge and
7 skills to serve children with disabilities.

8 “(B) RELATED SERVICES PERSONNEL AND
9 PARAPROFESSIONALS.—The qualifications
10 under subparagraph (A) include qualifications
11 for related services personnel and paraprofes-
12 sionals that—

13 “(i) are consistent with any State-ap-
14 proved or State-recognized certification, li-
15 censing, registration, or other comparable
16 requirements that apply to the professional
17 discipline in which those personnel are pro-
18 viding special education or related services;

19 “(ii) ensure that related services per-
20 sonnel who deliver services in their dis-
21 cipline or profession meet the requirements
22 of clause (i) and have not had certification
23 or licensure requirements waived on an
24 emergency, temporary, or provisional basis;
25 and

1 “(iii) allow paraprofessionals and as-
2 sistants who are appropriately trained and
3 supervised, in accordance with State law,
4 regulation, or written policy, in meeting
5 the requirements of this part to be used to
6 assist in the provision of special education
7 and related services under this part to chil-
8 dren with disabilities.

9 “(C) POLICY.—In implementing this sec-
10 tion, a State shall adopt a policy that includes
11 a requirement that local educational agencies in
12 the State take measurable steps to recruit, hire,
13 train, and retain highly qualified personnel to
14 provide special education and related services
15 under this part to children with disabilities.

16 “(D) RULE OF CONSTRUCTION.—Notwith-
17 standing any other individual right of action
18 that a parent or student may maintain under
19 this part, nothing in this paragraph shall be
20 construed to create a right of action on behalf
21 of an individual student for the failure of a par-
22 ticular State educational agency or local edu-
23 cational agency staff person to be highly quali-
24 fied, or to prevent a parent from filing a com-
25 plaint about staff qualifications with the State

1 educational agency as provided for under this
2 part.

3 “(15) PERFORMANCE GOALS AND INDICA-
4 TORS.—The State—

5 “(A) has established goals for the perform-
6 ance of children with disabilities in the State
7 that—

8 “(i) promote the purposes of this title,
9 as stated in section 601(d);

10 “(ii) are the same as the State’s defi-
11 nition of adequate yearly progress, includ-
12 ing the State’s objectives for progress by
13 children with disabilities, under section
14 1111(b)(2)(C) of the Elementary and Sec-
15 ondary Education Act of 1965;

16 “(iii) address graduation rates and
17 dropout rates, as well as such other factors
18 as the State may determine; and

19 “(iv) are consistent, to the extent ap-
20 propriate, with any other goals and stand-
21 ards for children established by the State;

22 “(B) has established performance indica-
23 tors the State will use to assess progress toward
24 achieving the goals described in subparagraph
25 (A), including measurable annual objectives for

1 progress by children with disabilities under sec-
2 tion 1111(b)(2)(C)(v)(II)(cc) of the Elementary
3 and Secondary Education Act of 1965; and

4 “(C) will annually report to the Secretary
5 and the public on the progress of the State, and
6 of children with disabilities in the State, toward
7 meeting the goals established under subpara-
8 graph (A), which may include elements of the
9 reports required under section 1111(h) of the
10 Elementary and Secondary Education Act of
11 1965.

12 “(16) PARTICIPATION IN ASSESSMENTS.—

13 “(A) IN GENERAL.—All children with dis-
14 abilities are included in all general State and
15 districtwide assessment programs, including as-
16 sessments described under section 1111 of the
17 Elementary and Secondary Education Act of
18 1965, with appropriate accommodations and al-
19 ternate assessments where necessary and as in-
20 dicated in their respective individualized edu-
21 cation programs.

22 “(B) ACCOMMODATION GUIDELINES.—The
23 State (or, in the case of a districtwide assess-
24 ment, the local educational agency) has devel-

1 oped guidelines for the provision of appropriate
2 accommodations.

3 “(C) ALTERNATE ASSESSMENTS.—

4 “(i) IN GENERAL.—The State (or, in
5 the case of a districtwide assessment, the
6 local educational agency) has developed
7 and implemented guidelines for the partici-
8 pation of children with disabilities in alter-
9 nate assessments for those children who
10 cannot participate in regular assessments
11 under subparagraph (A) with accommoda-
12 tions as indicated in their respective indi-
13 vidualized education programs.

14 “(ii) REQUIREMENTS FOR ALTERNATE
15 ASSESSMENTS.—The guidelines under
16 clause (i) shall provide for alternate assess-
17 ments that—

18 “(I) are aligned with the State’s
19 challenging academic content stand-
20 ards and challenging student aca-
21 demic achievement standards; and

22 “(II) if the State has adopted al-
23 ternate academic achievement stand-
24 ards permitted under the regulations
25 promulgated to carry out section

1 1111(b)(1) of the Elementary and
2 Secondary Education Act of 1965,
3 measure the achievement of children
4 with disabilities against those stand-
5 ards.

6 “(iii) CONDUCT OF ALTERNATE AS-
7 SESSMENTS.—The State conducts the al-
8 ternate assessments described in this sub-
9 paragraph.

10 “(D) REPORTS.—The State educational
11 agency (or, in the case of a districtwide assess-
12 ment, the local educational agency) makes
13 available to the public, and reports to the public
14 with the same frequency and in the same detail
15 as it reports on the assessment of nondisabled
16 children, the following:

17 “(i) The number of children with dis-
18 abilities participating in regular assess-
19 ments, and the number of those children
20 who were provided accommodations in
21 order to participate in those assessments.

22 “(ii) The number of children with dis-
23 abilities participating in alternate assess-
24 ments described in subparagraph (C)(ii)(I).

1 “(iii) The number of children with
2 disabilities participating in alternate as-
3 sessments described in subparagraph
4 (C)(ii)(II).

5 “(iv) The performance of children
6 with disabilities on regular assessments
7 and on alternate assessments (if the num-
8 ber of children with disabilities partici-
9 pating in those assessments is sufficient to
10 yield statistically reliable information and
11 reporting that information will not reveal
12 personally identifiable information about
13 an individual student), compared with the
14 achievement of all children, including chil-
15 dren with disabilities, on those assess-
16 ments.

17 “(E) UNIVERSAL DESIGN.—The State edu-
18 cational agency (or, in the case of a districtwide
19 assessment, the local educational agency) shall,
20 to the extent feasible, use universal design prin-
21 ciples in developing and administering any as-
22 sessments under this paragraph.

23 “(17) SUPPLEMENTATION OF STATE, LOCAL,
24 AND OTHER FEDERAL FUNDS.—

1 “(A) EXPENDITURES.—Funds paid to a
2 State under this part will be expended in ac-
3 cordance with all the provisions of this part.

4 “(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part
5 will not be commingled with State funds.

6 “(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SEC-
7 RETARY.—Except as provided in section 613,
8 funds paid to a State under this part will be
9 used to supplement the level of Federal, State,
10 and local funds (including funds that are not
11 under the direct control of State or local edu-
12 cational agencies) expended for special edu-
13 cation and related services provided to children
14 with disabilities under this part and in no case
15 to supplant such Federal, State, and local
16 funds, except that, where the State provides
17 clear and convincing evidence that all children
18 with disabilities have available to them a free
19 appropriate public education, the Secretary may
20 waive, in whole or in part, the requirements of
21 this subparagraph if the Secretary concurs with
22 the evidence provided by the State.
23
24

1 “(18) MAINTENANCE OF STATE FINANCIAL
2 SUPPORT.—

3 “(A) IN GENERAL.—The State does not re-
4 duce the amount of State financial support for
5 special education and related services for chil-
6 dren with disabilities, or otherwise made avail-
7 able because of the excess costs of educating
8 those children, below the amount of that sup-
9 port for the preceding fiscal year.

10 “(B) REDUCTION OF FUNDS FOR FAILURE
11 TO MAINTAIN SUPPORT.—The Secretary shall
12 reduce the allocation of funds under section 611
13 for any fiscal year following the fiscal year in
14 which the State fails to comply with the re-
15 quirement of subparagraph (A) by the same
16 amount by which the State fails to meet the re-
17 quirement.

18 “(C) WAIVERS FOR EXCEPTIONAL OR UN-
19 CONTROLLABLE CIRCUMSTANCES.—The Sec-
20 retary may waive the requirement of subpara-
21 graph (A) for a State, for 1 fiscal year at a
22 time, if the Secretary determines that—

23 “(i) granting a waiver would be equi-
24 table due to exceptional or uncontrollable
25 circumstances such as a natural disaster or

1 a precipitous and unforeseen decline in the
2 financial resources of the State; or

3 “(ii) the State meets the standard in
4 paragraph (17)(C) for a waiver of the re-
5 quirement to supplement, and not to sup-
6 plant, funds received under this part.

7 “(D) SUBSEQUENT YEARS.—If, for any
8 year, a State fails to meet the requirement of
9 subparagraph (A), including any year for which
10 the State is granted a waiver under subpara-
11 graph (C), the financial support required of the
12 State in future years under subparagraph (A)
13 shall be the amount that would have been re-
14 quired in the absence of that failure and not
15 the reduced level of the State’s support.

16 “(19) PUBLIC PARTICIPATION.—Prior to the
17 adoption of any policies and procedures needed to
18 comply with this section (including any amendments
19 to such policies and procedures), the State ensures
20 that there are public hearings, adequate notice of
21 the hearings, and an opportunity for comment avail-
22 able to the general public, including individuals with
23 disabilities and parents of children with disabilities.

24 “(20) RULE OF CONSTRUCTION.—In complying
25 with paragraphs (17) and (18), a State may not use

1 funds paid to it under this part to satisfy State-law
2 mandated funding obligations to local educational
3 agencies, including funding based on student attend-
4 ance or enrollment, or inflation.

5 “(21) STATE ADVISORY PANEL.—

6 “(A) IN GENERAL.—The State has estab-
7 lished and maintains an advisory panel for the
8 purpose of providing policy guidance with re-
9 spect to special education and related services
10 for children with disabilities in the State.

11 “(B) MEMBERSHIP.—Such advisory panel
12 shall consist of members appointed by the Gov-
13 ernor, or any other official authorized under
14 State law to make such appointments, be rep-
15 resentative of the State population, and be com-
16 posed of individuals involved in, or concerned
17 with, the education of children with disabilities,
18 including—

19 “(i) parents of children with disabil-
20 ities (ages birth through 26);

21 “(ii) individuals with disabilities;

22 “(iii) teachers;

23 “(iv) representatives of institutions of
24 higher education that prepare special edu-
25 cation and related services personnel;

1 “(v) State and local education offi-
2 cials, including officials who carry out ac-
3 tivities under subtitle B of title VII of the
4 McKinney-Vento Homeless Assistance Act
5 (42 U.S.C. 11431 et seq.);

6 “(vi) administrators of programs for
7 children with disabilities;

8 “(vii) representatives of other State
9 agencies involved in the financing or deliv-
10 ery of related services to children with dis-
11 abilities;

12 “(viii) representatives of private
13 schools and public charter schools;

14 “(ix) not less than 1 representative of
15 a vocational, community, or business orga-
16 nization concerned with the provision of
17 transition services to children with disabil-
18 ities;

19 “(x) a representative from the State
20 child welfare agency responsible for foster
21 care; and

22 “(xi) representatives from the State
23 juvenile and adult corrections agencies.

24 “(C) SPECIAL RULE.—A majority of the
25 members of the panel shall be individuals with

1 disabilities or parents of children with disabil-
2 ities (ages birth through 26).

3 “(D) DUTIES.—The advisory panel shall—

4 “(i) advise the State educational agen-
5 cy of unmet needs within the State in the
6 education of children with disabilities;

7 “(ii) comment publicly on any rules or
8 regulations proposed by the State regard-
9 ing the education of children with disabil-
10 ities;

11 “(iii) advise the State educational
12 agency in developing evaluations and re-
13 porting on data to the Secretary under sec-
14 tion 618;

15 “(iv) advise the State educational
16 agency in developing corrective action
17 plans to address findings identified in Fed-
18 eral monitoring reports under this part;
19 and

20 “(v) advise the State educational
21 agency in developing and implementing
22 policies relating to the coordination of serv-
23 ices for children with disabilities.

24 “(22) SUSPENSION AND EXPULSION RATES.—

1 “(A) IN GENERAL.—The State educational
2 agency examines data, including data
3 disaggregated by race and ethnicity, to deter-
4 mine if significant discrepancies are occurring
5 in the rate of long-term suspensions and expul-
6 sions of children with disabilities—

7 “(i) among local educational agencies
8 in the State; or

9 “(ii) compared to such rates for non-
10 disabled children within such agencies.

11 “(B) REVIEW AND REVISION OF POLI-
12 CIES.—If such discrepancies are occurring, the
13 State educational agency reviews and, if appro-
14 priate, revises (or requires the affected State or
15 local educational agency to revise) its policies,
16 procedures, and practices relating to the devel-
17 opment and implementation of IEPs, the use of
18 positive behavioral interventions and supports,
19 and procedural safeguards, to ensure that such
20 policies, procedures, and practices comply with
21 this title.

22 “(23) ACCESS TO INSTRUCTIONAL MATE-
23 RIALS.—

24 “(A) IN GENERAL.—The State adopts the
25 National Instructional Materials Accessibility

1 Standard for the purposes of providing instruc-
2 tional materials to blind persons or other per-
3 sons with print disabilities, in a timely manner
4 after the publication of the National Instruc-
5 tional Materials Accessibility Standard in the
6 Federal Register.

7 “(B) RIGHTS OF STATE EDUCATIONAL
8 AGENCY.—Nothing in this paragraph shall be
9 construed to require any State educational
10 agency to coordinate with the National Instruc-
11 tional Materials Access Center. If a State edu-
12 cational agency chooses not to coordinate with
13 the National Instructional Materials Access
14 Center, such agency shall provide an assurance
15 to the Secretary that the agency will provide in-
16 structional materials to blind persons or other
17 persons with print disabilities in a timely man-
18 ner.

19 “(C) PREPARATION AND DELIVERY OF
20 FILES.—If a State educational agency chooses
21 to coordinate with the National Instructional
22 Materials Access Center, not later than 2 years
23 after the date of enactment of the Individuals
24 with Disabilities Education Improvement Act of
25 2004, the agency, as part of any print instruc-

1 tional materials adoption process, procurement
2 contract, or other practice or instrument used
3 for purchase of print instructional materials,
4 shall enter into a written contract with the pub-
5 lisher of the print instructional materials to—

6 “(i) require the publisher to prepare
7 and, on or before delivery of the print in-
8 structional materials, provide to the Na-
9 tional Instructional Materials Access Cen-
10 ter electronic files containing the contents
11 of the print instructional materials using
12 the National Instructional Materials Acces-
13 sibility Standard; or

14 “(ii) purchase instructional materials
15 from the publisher that are produced in, or
16 may be rendered in, specialized formats.

17 “(D) ASSISTIVE TECHNOLOGY.—In car-
18 rying out this paragraph, the State educational
19 agency, to the maximum extent possible, shall
20 work collaboratively with the State agency re-
21 sponsible for assistive technology programs.

22 “(E) DEFINITIONS.—In this paragraph:

23 “(i) NATIONAL INSTRUCTIONAL MATE-
24 RIALS ACCESS CENTER.—The term ‘Na-
25 tional Instructional Materials Access Cen-

1 ter’ means the center established pursuant
2 to section 674(e).

3 “(ii) NATIONAL INSTRUCTIONAL MA-
4 TERIALS ACCESSIBILITY STANDARD.—The
5 term ‘National Instructional Materials Ac-
6 cessibility Standard’ has the meaning given
7 the term in section 674(e)(3)(A).

8 “(iii) SPECIALIZED FORMATS.—The
9 term ‘specialized formats’ has the meaning
10 given the term in section 674(e)(3)(D).

11 “(24) OVERIDENTIFICATION AND
12 DISPROPORTIONALITY.—The State has in effect,
13 consistent with the purposes of this title and with
14 section 618(d), policies and procedures designed to
15 prevent the inappropriate overidentification or dis-
16 proportionate representation by race and ethnicity of
17 children as children with disabilities, including chil-
18 dren with disabilities with a particular impairment
19 described in section 602.

20 “(25) PROHIBITION ON MANDATORY MEDICA-
21 TION.—

22 “(A) IN GENERAL.—The State educational
23 agency shall prohibit State and local edu-
24 cational agency personnel from requiring a child
25 to obtain a prescription for a substance covered

1 by the Controlled Substances Act (21 U.S.C.
2 801 et seq.) as a condition of attending school,
3 receiving an evaluation under subsection (a) or
4 (c) of section 614, or receiving services under
5 this title.

6 “(B) RULE OF CONSTRUCTION.—Nothing
7 in subparagraph (A) shall be construed to cre-
8 ate a Federal prohibition against teachers and
9 other school personnel consulting or sharing
10 classroom-based observations with parents or
11 guardians regarding a student’s academic and
12 functional performance, or behavior in the
13 classroom or school, or regarding the need for
14 evaluation for special education or related serv-
15 ices under paragraph (3).

16 “(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF
17 FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT
18 SERVICES.—If the State educational agency provides free
19 appropriate public education to children with disabilities,
20 or provides direct services to such children, such agency—

21 “(1) shall comply with any additional require-
22 ments of section 613(a), as if such agency were a
23 local educational agency; and

24 “(2) may use amounts that are otherwise avail-
25 able to such agency under this part to serve those

1 children without regard to section 613(a)(2)(A)(i)
2 (relating to excess costs).

3 “(c) EXCEPTION FOR PRIOR STATE PLANS.—

4 “(1) IN GENERAL.—If a State has on file with
5 the Secretary policies and procedures that dem-
6 onstrate that such State meets any requirement of
7 subsection (a), including any policies and procedures
8 filed under this part as in effect before the effective
9 date of the Individuals with Disabilities Education
10 Improvement Act of 2004, the Secretary shall con-
11 sider such State to have met such requirement for
12 purposes of receiving a grant under this part.

13 “(2) MODIFICATIONS MADE BY STATE.—Sub-
14 ject to paragraph (3), an application submitted by a
15 State in accordance with this section shall remain in
16 effect until the State submits to the Secretary such
17 modifications as the State determines necessary.
18 This section shall apply to a modification to an ap-
19 plication to the same extent and in the same manner
20 as this section applies to the original plan.

21 “(3) MODIFICATIONS REQUIRED BY THE SEC-
22 RETARY.—If, after the effective date of the Individ-
23 uals with Disabilities Education Improvement Act of
24 2004, the provisions of this title are amended (or
25 the regulations developed to carry out this title are

1 amended), there is a new interpretation of this title
2 by a Federal court or a State's highest court, or
3 there is an official finding of noncompliance with
4 Federal law or regulations, then the Secretary may
5 require a State to modify its application only to the
6 extent necessary to ensure the State's compliance
7 with this part.

8 “(d) APPROVAL BY THE SECRETARY.—

9 “(1) IN GENERAL.—If the Secretary determines
10 that a State is eligible to receive a grant under this
11 part, the Secretary shall notify the State of that de-
12 termination.

13 “(2) NOTICE AND HEARING.—The Secretary
14 shall not make a final determination that a State is
15 not eligible to receive a grant under this part until
16 after providing the State—

17 “(A) with reasonable notice; and

18 “(B) with an opportunity for a hearing.

19 “(e) ASSISTANCE UNDER OTHER FEDERAL PRO-
20 GRAMS.—Nothing in this title permits a State to reduce
21 medical and other assistance available, or to alter eligi-
22 bility, under titles V and XIX of the Social Security Act
23 with respect to the provision of a free appropriate public
24 education for children with disabilities in the State.

1 “(f) BY-PASS FOR CHILDREN IN PRIVATE
2 SCHOOLS.—

3 “(1) IN GENERAL.—If, on the date of enact-
4 ment of the Education of the Handicapped Act
5 Amendments of 1983, a State educational agency
6 was prohibited by law from providing for the equi-
7 table participation in special programs of children
8 with disabilities enrolled in private elementary
9 schools and secondary schools as required by sub-
10 section (a)(10)(A), or if the Secretary determines
11 that a State educational agency, local educational
12 agency, or other entity has substantially failed or is
13 unwilling to provide for such equitable participation,
14 then the Secretary shall, notwithstanding such provi-
15 sion of law, arrange for the provision of services to
16 such children through arrangements that shall be
17 subject to the requirements of such subsection.

18 “(2) PAYMENTS.—

19 “(A) DETERMINATION OF AMOUNTS.—If
20 the Secretary arranges for services pursuant to
21 this subsection, the Secretary, after consulta-
22 tion with the appropriate public and private
23 school officials, shall pay to the provider of such
24 services for a fiscal year an amount per child

1 that does not exceed the amount determined by
2 dividing—

3 “(i) the total amount received by the
4 State under this part for such fiscal year;
5 by

6 “(ii) the number of children with dis-
7 abilities served in the prior year, as re-
8 ported to the Secretary by the State under
9 section 618.

10 “(B) WITHHOLDING OF CERTAIN
11 AMOUNTS.—Pending final resolution of any in-
12 vestigation or complaint that may result in a
13 determination under this subsection, the Sec-
14 retary may withhold from the allocation of the
15 affected State educational agency the amount
16 the Secretary estimates will be necessary to pay
17 the cost of services described in subparagraph
18 (A).

19 “(C) PERIOD OF PAYMENTS.—The period
20 under which payments are made under sub-
21 paragraph (A) shall continue until the Sec-
22 retary determines that there will no longer be
23 any failure or inability on the part of the State
24 educational agency to meet the requirements of
25 subsection (a)(10)(A).

1 “(3) NOTICE AND HEARING.—

2 “(A) IN GENERAL.—The Secretary shall
3 not take any final action under this subsection
4 until the State educational agency affected by
5 such action has had an opportunity, for not less
6 than 45 days after receiving written notice
7 thereof, to submit written objections and to ap-
8 pear before the Secretary or the Secretary’s
9 designee to show cause why such action should
10 not be taken.

11 “(B) REVIEW OF ACTION.—If a State edu-
12 cational agency is dissatisfied with the Sec-
13 retary’s final action after a proceeding under
14 subparagraph (A), such agency may, not later
15 than 60 days after notice of such action, file
16 with the United States court of appeals for the
17 circuit in which such State is located a petition
18 for review of that action. A copy of the petition
19 shall be forthwith transmitted by the clerk of
20 the court to the Secretary. The Secretary there-
21 upon shall file in the court the record of the
22 proceedings on which the Secretary based the
23 Secretary’s action, as provided in section 2112
24 of title 28, United States Code.

1 “(C) REVIEW OF FINDINGS OF FACT.—The
2 findings of fact by the Secretary, if supported
3 by substantial evidence, shall be conclusive, but
4 the court, for good cause shown, may remand
5 the case to the Secretary to take further evi-
6 dence, and the Secretary may thereupon make
7 new or modified findings of fact and may mod-
8 ify the Secretary’s previous action, and shall file
9 in the court the record of the further pro-
10 ceedings. Such new or modified findings of fact
11 shall likewise be conclusive if supported by sub-
12 stantial evidence.

13 “(D) JURISDICTION OF COURT OF AP-
14 PEALS; REVIEW BY UNITED STATES SUPREME
15 COURT.—Upon the filing of a petition under
16 subparagraph (B), the United States court of
17 appeals shall have jurisdiction to affirm the ac-
18 tion of the Secretary or to set it aside, in whole
19 or in part. The judgment of the court shall be
20 subject to review by the Supreme Court of the
21 United States upon certiorari or certification as
22 provided in section 1254 of title 28, United
23 States Code.

1 **“SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**

2 “(a) IN GENERAL.—A local educational agency is eli-
3 gible for assistance under this part for a fiscal year if such
4 agency submits a plan that provides assurances to the
5 State educational agency that the local educational agency
6 meets each of the following conditions:

7 “(1) CONSISTENCY WITH STATE POLICIES.—

8 The local educational agency, in providing for the
9 education of children with disabilities within its ju-
10 risdiction, has in effect policies, procedures, and pro-
11 grams that are consistent with the State policies and
12 procedures established under section 612.

13 “(2) USE OF AMOUNTS.—

14 “(A) IN GENERAL.—Amounts provided to
15 the local educational agency under this part
16 shall be expended in accordance with the appli-
17 cable provisions of this part and—

18 “(i) shall be used only to pay the ex-
19 cess costs of providing special education
20 and related services to children with dis-
21 abilities;

22 “(ii) shall be used to supplement
23 State, local, and other Federal funds and
24 not to supplant such funds; and

25 “(iii) shall not be used, except as pro-
26 vided in subparagraphs (B) and (C), to re-

1 duce the level of expenditures for the edu-
2 cation of children with disabilities made by
3 the local educational agency from local
4 funds below the level of those expenditures
5 for the preceding fiscal year.

6 “(B) EXCEPTION.—Notwithstanding the
7 restriction in subparagraph (A)(iii), a local edu-
8 cational agency may reduce the level of expendi-
9 tures where such reduction is attributable to—

10 “(i) the voluntary departure, by re-
11 tirement or otherwise, or departure for just
12 cause, of special education personnel;

13 “(ii) a decrease in the enrollment of
14 children with disabilities;

15 “(iii) the termination of the obligation
16 of the agency, consistent with this part, to
17 provide a program of special education to
18 a particular child with a disability that is
19 an exceptionally costly program, as deter-
20 mined by the State educational agency, be-
21 cause the child—

22 “(I) has left the jurisdiction of
23 the agency;

24 “(II) has reached the age at
25 which the obligation of the agency to

1 provide a free appropriate public edu-
2 cation to the child has terminated; or

3 “(III) no longer needs such pro-
4 gram of special education; or

5 “(iv) the termination of costly expend-
6 itures for long-term purchases, such as the
7 acquisition of equipment or the construc-
8 tion of school facilities.

9 “(C) ADJUSTMENT TO LOCAL FISCAL EF-
10 FORT IN CERTAIN FISCAL YEARS.—

11 “(i) AMOUNTS IN EXCESS.—Notwith-
12 standing clauses (ii) and (iii) of subpara-
13 graph (A), for any fiscal year for which the
14 allocation received by a local educational
15 agency under section 611(f) exceeds the
16 amount the local educational agency re-
17 ceived for the previous fiscal year, the local
18 educational agency may reduce the level of
19 expenditures otherwise required by sub-
20 paragraph (A)(iii) by not more than 50
21 percent of the amount of such excess.

22 “(ii) USE OF AMOUNTS TO CARRY OUT
23 ACTIVITIES UNDER ESEA.—If a local edu-
24 cational agency exercises the authority
25 under clause (i), the agency shall use an

1 amount of local funds equal to the reduc-
2 tion in expenditures under clause (i) to
3 carry out activities authorized under the
4 Elementary and Secondary Education Act
5 of 1965.

6 “(iii) STATE PROHIBITION.—Notwith-
7 standing clause (i), if a State educational
8 agency determines that a local educational
9 agency is unable to establish and maintain
10 programs of free appropriate public edu-
11 cation that meet the requirements of sub-
12 section (a) or the State educational agency
13 has taken action against the local edu-
14 cational agency under section 616, the
15 State educational agency shall prohibit the
16 local educational agency from reducing the
17 level of expenditures under clause (i) for
18 that fiscal year.

19 “(iv) SPECIAL RULE.—The amount of
20 funds expended by a local educational
21 agency under subsection (f) shall count to-
22 ward the maximum amount of expendi-
23 tures such local educational agency may
24 reduce under clause (i).

1 “(D) SCHOOLWIDE PROGRAMS UNDER
2 TITLE I OF THE ESEA.—Notwithstanding sub-
3 paragraph (A) or any other provision of this
4 part, a local educational agency may use funds
5 received under this part for any fiscal year to
6 carry out a schoolwide program under section
7 1114 of the Elementary and Secondary Edu-
8 cation Act of 1965, except that the amount so
9 used in any such program shall not exceed—

10 “(i) the number of children with dis-
11 abilities participating in the schoolwide
12 program; multiplied by

13 “(ii)(I) the amount received by the
14 local educational agency under this part
15 for that fiscal year; divided by

16 “(II) the number of children with dis-
17 abilities in the jurisdiction of that agency.

18 “(3) PERSONNEL DEVELOPMENT.—The local
19 educational agency shall ensure that all personnel
20 necessary to carry out this part are appropriately
21 and adequately prepared, subject to the require-
22 ments of section 612(a)(14) and section 2122 of the
23 Elementary and Secondary Education Act of 1965.

24 “(4) PERMISSIVE USE OF FUNDS.—

1 “(A) USES.—Notwithstanding paragraph
2 (2)(A) or section 612(a)(17)(B) (relating to
3 commingled funds), funds provided to the local
4 educational agency under this part may be used
5 for the following activities:

6 “(i) SERVICES AND AIDS THAT ALSO
7 BENEFIT NONDISABLED CHILDREN.—For
8 the costs of special education and related
9 services, and supplementary aids and serv-
10 ices, provided in a regular class or other
11 education-related setting to a child with a
12 disability in accordance with the individual-
13 ized education program of the child, even
14 if 1 or more nondisabled children benefit
15 from such services.

16 “(ii) EARLY INTERVENING SERV-
17 ICES.—To develop and implement coordi-
18 nated, early intervening educational serv-
19 ices in accordance with subsection (f).

20 “(iii) HIGH COST EDUCATION AND RE-
21 LATED SERVICES.—To establish and imple-
22 ment cost or risk sharing funds, consortia,
23 or cooperatives for the local educational
24 agency itself, or for local educational agen-
25 cies working in a consortium of which the

1 local educational agency is a part, to pay
2 for high cost special education and related
3 services.

4 “(B) ADMINISTRATIVE CASE MANAGE-
5 MENT.—A local educational agency may use
6 funds received under this part to purchase ap-
7 propriate technology for recordkeeping, data
8 collection, and related case management activi-
9 ties of teachers and related services personnel
10 providing services described in the individual-
11 ized education program of children with disabil-
12 ities, that is needed for the implementation of
13 such case management activities.

14 “(5) TREATMENT OF CHARTER SCHOOLS AND
15 THEIR STUDENTS.—In carrying out this part with
16 respect to charter schools that are public schools of
17 the local educational agency, the local educational
18 agency—

19 “(A) serves children with disabilities at-
20 tending those charter schools in the same man-
21 ner as the local educational agency serves chil-
22 dren with disabilities in its other schools, in-
23 cluding providing supplementary and related
24 services on site at the charter school to the
25 same extent to which the local educational

1 agency has a policy or practice of providing
2 such services on the site to its other public
3 schools; and

4 “(B) provides funds under this part to
5 those charter schools—

6 “(i) on the same basis as the local
7 educational agency provides funds to the
8 local educational agency’s other public
9 schools, including proportional distribution
10 based on relative enrollment of children
11 with disabilities; and

12 “(ii) at the same time as the agency
13 distributes other Federal funds to the
14 agency’s other public schools, consistent
15 with the State’s charter school law.

16 “(6) PURCHASE OF INSTRUCTIONAL MATE-
17 RIALS.—

18 “(A) IN GENERAL.—Not later than 2 years
19 after the date of enactment of the Individuals
20 with Disabilities Education Improvement Act of
21 2004, a local educational agency that chooses to
22 coordinate with the National Instructional Ma-
23 terials Access Center, when purchasing print in-
24 structional materials, shall acquire the print in-
25 structional materials in the same manner and

1 subject to the same conditions as a State edu-
2 cational agency acquires print instructional ma-
3 terials under section 612(a)(23).

4 “(B) RIGHTS OF LOCAL EDUCATIONAL
5 AGENCY.—Nothing in this paragraph shall be
6 construed to require a local educational agency
7 to coordinate with the National Instructional
8 Materials Access Center. If a local educational
9 agency chooses not to coordinate with the Na-
10 tional Instructional Materials Access Center,
11 the local educational agency shall provide an as-
12 surance to the State educational agency that
13 the local educational agency will provide in-
14 structional materials to blind persons or other
15 persons with print disabilities in a timely man-
16 ner.

17 “(7) INFORMATION FOR STATE EDUCATIONAL
18 AGENCY.—The local educational agency shall provide
19 the State educational agency with information nec-
20 essary to enable the State educational agency to
21 carry out its duties under this part, including, with
22 respect to paragraphs (15) and (16) of section
23 612(a), information relating to the performance of
24 children with disabilities participating in programs
25 carried out under this part.

1 “(8) PUBLIC INFORMATION.—The local edu-
2 cational agency shall make available to parents of
3 children with disabilities and to the general public
4 all documents relating to the eligibility of such agen-
5 cy under this part.

6 “(9) RECORDS REGARDING MIGRATORY CHIL-
7 DREN WITH DISABILITIES.—The local educational
8 agency shall cooperate in the Secretary’s efforts
9 under section 1308 of the Elementary and Sec-
10 ondary Education Act of 1965 to ensure the linkage
11 of records pertaining to migratory children with a
12 disability for the purpose of electronically exchang-
13 ing, among the States, health and educational infor-
14 mation regarding such children.

15 “(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

16 “(1) IN GENERAL.—If a local educational agen-
17 cy or State agency has on file with the State edu-
18 cational agency policies and procedures that dem-
19 onstrate that such local educational agency, or such
20 State agency, as the case may be, meets any require-
21 ment of subsection (a), including any policies and
22 procedures filed under this part as in effect before
23 the effective date of the Individuals with Disabilities
24 Education Improvement Act of 2004, the State edu-
25 cational agency shall consider such local educational

1 agency or State agency, as the case may be, to have
2 met such requirement for purposes of receiving as-
3 sistance under this part.

4 “(2) MODIFICATION MADE BY LOCAL EDU-
5 CATIONAL AGENCY.—Subject to paragraph (3), an
6 application submitted by a local educational agency
7 in accordance with this section shall remain in effect
8 until the local educational agency submits to the
9 State educational agency such modifications as the
10 local educational agency determines necessary.

11 “(3) MODIFICATIONS REQUIRED BY STATE
12 EDUCATIONAL AGENCY.—If, after the effective date
13 of the Individuals with Disabilities Education Im-
14 provement Act of 2004, the provisions of this title
15 are amended (or the regulations developed to carry
16 out this title are amended), there is a new interpre-
17 tation of this title by Federal or State courts, or
18 there is an official finding of noncompliance with
19 Federal or State law or regulations, then the State
20 educational agency may require a local educational
21 agency to modify its application only to the extent
22 necessary to ensure the local educational agency’s
23 compliance with this part or State law.

24 “(c) NOTIFICATION OF LOCAL EDUCATIONAL AGEN-
25 CY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the

1 State educational agency determines that a local edu-
2 cational agency or State agency is not eligible under this
3 section, then the State educational agency shall notify the
4 local educational agency or State agency, as the case may
5 be, of that determination and shall provide such local edu-
6 cational agency or State agency with reasonable notice and
7 an opportunity for a hearing.

8 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

9 “(1) IN GENERAL.—If the State educational
10 agency, after reasonable notice and an opportunity
11 for a hearing, finds that a local educational agency
12 or State agency that has been determined to be eligi-
13 ble under this section is failing to comply with any
14 requirement described in subsection (a), the State
15 educational agency shall reduce or shall not provide
16 any further payments to the local educational agency
17 or State agency until the State educational agency
18 is satisfied that the local educational agency or State
19 agency, as the case may be, is complying with that
20 requirement.

21 “(2) ADDITIONAL REQUIREMENT.—Any State
22 agency or local educational agency in receipt of a no-
23 tice described in paragraph (1) shall, by means of
24 public notice, take such measures as may be nec-
25 essary to bring the pendency of an action pursuant

1 to this subsection to the attention of the public with-
2 in the jurisdiction of such agency.

3 “(3) CONSIDERATION.—In carrying out its re-
4 sponsibilities under paragraph (1), the State edu-
5 cational agency shall consider any decision made in
6 a hearing held under section 615 that is adverse to
7 the local educational agency or State agency involved
8 in that decision.

9 “(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

10 “(1) JOINT ESTABLISHMENT.—

11 “(A) IN GENERAL.—A State educational
12 agency may require a local educational agency
13 to establish its eligibility jointly with another
14 local educational agency if the State educational
15 agency determines that the local educational
16 agency will be ineligible under this section be-
17 cause the local educational agency will not be
18 able to establish and maintain programs of suf-
19 ficient size and scope to effectively meet the
20 needs of children with disabilities.

21 “(B) CHARTER SCHOOL EXCEPTION.—A
22 State educational agency may not require a
23 charter school that is a local educational agency
24 to jointly establish its eligibility under subpara-
25 graph (A) unless the charter school is explicitly

1 permitted to do so under the State’s charter
2 school law.

3 “(2) AMOUNT OF PAYMENTS.—If a State edu-
4 cational agency requires the joint establishment of
5 eligibility under paragraph (1), the total amount of
6 funds made available to the affected local edu-
7 cational agencies shall be equal to the sum of the
8 payments that each such local educational agency
9 would have received under section 611(f) if such
10 agencies were eligible for such payments.

11 “(3) REQUIREMENTS.—Local educational agen-
12 cies that establish joint eligibility under this sub-
13 section shall—

14 “(A) adopt policies and procedures that
15 are consistent with the State’s policies and pro-
16 cedures under section 612(a); and

17 “(B) be jointly responsible for imple-
18 menting programs that receive assistance under
19 this part.

20 “(4) REQUIREMENTS FOR EDUCATIONAL SERV-
21 ICE AGENCIES.—

22 “(A) IN GENERAL.—If an educational serv-
23 ice agency is required by State law to carry out
24 programs under this part, the joint responsibil-

1 ities given to local educational agencies under
2 this subsection shall—

3 “(i) not apply to the administration
4 and disbursement of any payments re-
5 ceived by that educational service agency;
6 and

7 “(ii) be carried out only by that edu-
8 cational service agency.

9 “(B) ADDITIONAL REQUIREMENT.—Not-
10 withstanding any other provision of this sub-
11 section, an educational service agency shall pro-
12 vide for the education of children with disabil-
13 ities in the least restrictive environment, as re-
14 quired by section 612(a)(5).

15 “(f) EARLY INTERVENING SERVICES.—

16 “(1) IN GENERAL.—A local educational agency
17 may not use more than 15 percent of the amount
18 such agency receives under this part for any fiscal
19 year, less any amount reduced by the agency pursu-
20 ant to subsection (a)(2)(C), if any, in combination
21 with other amounts (which may include amounts
22 other than education funds), to develop and imple-
23 ment coordinated, early intervening services, which
24 may include interagency financing structures, for
25 students in kindergarten through grade 12 (with a

1 particular emphasis on students in kindergarten
2 through grade 3) who have not been identified as
3 needing special education or related services but who
4 need additional academic and behavioral support to
5 succeed in a general education environment.

6 “(2) ACTIVITIES.—In implementing coordi-
7 nated, early intervening services under this sub-
8 section, a local educational agency may carry out ac-
9 tivities that include—

10 “(A) professional development (which may
11 be provided by entities other than local edu-
12 cational agencies) for teachers and other school
13 staff to enable such personnel to deliver sci-
14 entifically based academic instruction and be-
15 havioral interventions, including scientifically
16 based literacy instruction, and, where appro-
17 priate, instruction on the use of adaptive and
18 instructional software; and

19 “(B) providing educational and behavioral
20 evaluations, services, and supports, including
21 scientifically based literacy instruction.

22 “(3) CONSTRUCTION.—Nothing in this sub-
23 section shall be construed to limit or create a right
24 to a free appropriate public education under this
25 part.

1 “(4) REPORTING.—Each local educational
2 agency that develops and maintains coordinated,
3 early intervening services under this subsection shall
4 annually report to the State educational agency on—

5 “(A) the number of students served under
6 this subsection; and

7 “(B) the number of students served under
8 this subsection who subsequently receive special
9 education and related services under this title
10 during the preceding 2-year period.

11 “(5) COORDINATION WITH ELEMENTARY AND
12 SECONDARY EDUCATION ACT OF 1965.—Funds made
13 available to carry out this subsection may be used to
14 carry out coordinated, early intervening services
15 aligned with activities funded by, and carried out
16 under, the Elementary and Secondary Education Act
17 of 1965 if such funds are used to supplement, and
18 not supplant, funds made available under the Ele-
19 mentary and Secondary Education Act of 1965 for
20 the activities and services assisted under this sub-
21 section.

22 “(g) DIRECT SERVICES BY THE STATE EDU-
23 CATIONAL AGENCY.—

24 “(1) IN GENERAL.—A State educational agency
25 shall use the payments that would otherwise have

1 been available to a local educational agency or to a
2 State agency to provide special education and re-
3 lated services directly to children with disabilities re-
4 siding in the area served by that local educational
5 agency, or for whom that State agency is respon-
6 sible, if the State educational agency determines
7 that the local educational agency or State agency, as
8 the case may be—

9 “(A) has not provided the information
10 needed to establish the eligibility of such local
11 educational agency or State agency under this
12 section;

13 “(B) is unable to establish and maintain
14 programs of free appropriate public education
15 that meet the requirements of subsection (a);

16 “(C) is unable or unwilling to be consoli-
17 dated with 1 or more local educational agencies
18 in order to establish and maintain such pro-
19 grams; or

20 “(D) has 1 or more children with disabil-
21 ities who can best be served by a regional or
22 State program or service delivery system de-
23 signed to meet the needs of such children.

24 “(2) MANNER AND LOCATION OF EDUCATION
25 AND SERVICES.—The State educational agency may

1 provide special education and related services under
2 paragraph (1) in such manner and at such locations
3 (including regional or State centers) as the State
4 educational agency considers appropriate. Such edu-
5 cation and services shall be provided in accordance
6 with this part.

7 “(h) STATE AGENCY ELIGIBILITY.—Any State agen-
8 cy that desires to receive a subgrant for any fiscal year
9 under section 611(f) shall demonstrate to the satisfaction
10 of the State educational agency that—

11 “(1) all children with disabilities who are par-
12 ticipating in programs and projects funded under
13 this part receive a free appropriate public education,
14 and that those children and their parents are pro-
15 vided all the rights and procedural safeguards de-
16 scribed in this part; and

17 “(2) the agency meets such other conditions of
18 this section as the Secretary determines to be appro-
19 priate.

20 “(i) DISCIPLINARY INFORMATION.—The State may
21 require that a local educational agency include in the
22 records of a child with a disability a statement of any cur-
23 rent or previous disciplinary action that has been taken
24 against the child and transmit such statement to the same
25 extent that such disciplinary information is included in,

1 and transmitted with, the student records of nondisabled
2 children. The statement may include a description of any
3 behavior engaged in by the child that required disciplinary
4 action, a description of the disciplinary action taken, and
5 any other information that is relevant to the safety of the
6 child and other individuals involved with the child. If the
7 State adopts such a policy, and the child transfers from
8 1 school to another, the transmission of any of the child's
9 records shall include both the child's current individual-
10 ized education program and any such statement of current
11 or previous disciplinary action that has been taken against
12 the child.

13 “(j) STATE AGENCY FLEXIBILITY.—

14 “(1) ADJUSTMENT TO STATE FISCAL EFFORT
15 IN CERTAIN FISCAL YEARS.—For any fiscal year for
16 which the allotment received by a State under sec-
17 tion 611 exceeds the amount the State received for
18 the previous fiscal year and if the State in school
19 year 2003–2004 or any subsequent school year pays
20 or reimburses all local educational agencies within
21 the State from State revenue 100 percent of the
22 non-Federal share of the costs of special education
23 and related services, the State educational agency,
24 notwithstanding paragraphs (17) and (18) of section
25 612(a) and section 612(b), may reduce the level of

1 expenditures from State sources for the education of
2 children with disabilities by not more than 50 per-
3 cent of the amount of such excess.

4 “(2) PROHIBITION.—Notwithstanding para-
5 graph (1), if the Secretary determines that a State
6 educational agency is unable to establish, maintain,
7 or oversee programs of free appropriate public edu-
8 cation that meet the requirements of this part, or
9 that the State needs assistance, intervention, or sub-
10 stantial intervention under section 616(d)(2)(A), the
11 Secretary shall prohibit the State educational agency
12 from exercising the authority in paragraph (1).

13 “(3) EDUCATION ACTIVITIES.—If a State edu-
14 cational agency exercises the authority under para-
15 graph (1), the agency shall use funds from State
16 sources, in an amount equal to the amount of the
17 reduction under paragraph (1), to support activities
18 authorized under the Elementary and Secondary
19 Education Act of 1965 or to support need based stu-
20 dent or teacher higher education programs.

21 “(4) REPORT.—For each fiscal year for which
22 a State educational agency exercises the authority
23 under paragraph (1), the State educational agency
24 shall report to the Secretary the amount of expendi-
25 tures reduced pursuant to such paragraph and the

1 activities that were funded pursuant to paragraph
2 (3).

3 “(5) LIMITATION.—Notwithstanding paragraph
4 (1), a State educational agency may not reduce the
5 level of expenditures described in paragraph (1) if
6 any local educational agency in the State would, as
7 a result of such reduction, receive less than 100 per-
8 cent of the amount necessary to ensure that all chil-
9 dren with disabilities served by the local educational
10 agency receive a free appropriate public education
11 from the combination of Federal funds received
12 under this title and State funds received from the
13 State educational agency.

14 **“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS,**
15 **INDIVIDUALIZED EDUCATION PROGRAMS,**
16 **AND EDUCATIONAL PLACEMENTS.**

17 “(a) EVALUATIONS, PARENTAL CONSENT, AND RE-
18 EVALUATIONS.—

19 “(1) INITIAL EVALUATIONS.—

20 “(A) IN GENERAL.—A State educational
21 agency, other State agency, or local educational
22 agency shall conduct a full and individual initial
23 evaluation in accordance with this paragraph
24 and subsection (b), before the initial provision

1 of special education and related services to a
2 child with a disability under this part.

3 “(B) REQUEST FOR INITIAL EVALUA-
4 TION.—Consistent with subparagraph (D), ei-
5 ther a parent of a child, or a State educational
6 agency, other State agency, or local educational
7 agency may initiate a request for an initial eval-
8 uation to determine if the child is a child with
9 a disability.

10 “(C) PROCEDURES.—

11 “(i) IN GENERAL.—Such initial eval-
12 uation shall consist of procedures—

13 “(I) to determine whether a child
14 is a child with a disability (as defined
15 in section 602) within 60 days of re-
16 ceiving parental consent for the eval-
17 uation, or, if the State establishes a
18 timeframe within which the evaluation
19 must be conducted, within such time-
20 frame; and

21 “(II) to determine the edu-
22 cational needs of such child.

23 “(ii) EXCEPTION.—The relevant time-
24 frame in clause (i)(I) shall not apply to a
25 local educational agency if—

1 “(I) a child enrolls in a school
2 served by the local educational agency
3 after the relevant timeframe in clause
4 (i)(I) has begun and prior to a deter-
5 mination by the child’s previous local
6 educational agency as to whether the
7 child is a child with a disability (as
8 defined in section 602), but only if the
9 subsequent local educational agency is
10 making sufficient progress to ensure a
11 prompt completion of the evaluation,
12 and the parent and subsequent local
13 educational agency agree to a specific
14 time when the evaluation will be com-
15 pleted; or

16 “(II) the parent of a child re-
17 peatedly fails or refuses to produce
18 the child for the evaluation.

19 “(D) PARENTAL CONSENT.—

20 “(i) IN GENERAL.—

21 “(I) CONSENT FOR INITIAL
22 EVALUATION.—The agency proposing
23 to conduct an initial evaluation to de-
24 termine if the child qualifies as a child
25 with a disability as defined in section

1 602 shall obtain informed consent
2 from the parent of such child before
3 conducting the evaluation. Parental
4 consent for evaluation shall not be
5 construed as consent for placement
6 for receipt of special education and re-
7 lated services.

8 “(II) CONSENT FOR SERVICES.—

9 An agency that is responsible for
10 making a free appropriate public edu-
11 cation available to a child with a dis-
12 ability under this part shall seek to
13 obtain informed consent from the par-
14 ent of such child before providing spe-
15 cial education and related services to
16 the child.

17 “(ii) ABSENCE OF CONSENT.—

18 “(I) FOR INITIAL EVALUATION.—

19 If the parent of such child does not
20 provide consent for an initial evalua-
21 tion under clause (i)(I), or the parent
22 fails to respond to a request to pro-
23 vide the consent, the local educational
24 agency may pursue the initial evalua-
25 tion of the child by utilizing the proce-

1 dures described in section 615, except
2 to the extent inconsistent with State
3 law relating to such parental consent.

4 “(II) FOR SERVICES.—If the par-
5 ent of such child refuses to consent to
6 services under clause (i)(II), the local
7 educational agency shall not provide
8 special education and related services
9 to the child by utilizing the procedures
10 described in section 615.

11 “(III) EFFECT ON AGENCY OBLI-
12 GATIONS.—If the parent of such child
13 refuses to consent to the receipt of
14 special education and related services,
15 or the parent fails to respond to a re-
16 quest to provide such consent—

17 “(aa) the local educational
18 agency shall not be considered to
19 be in violation of the requirement
20 to make available a free appro-
21 priate public education to the
22 child for the failure to provide
23 such child with the special edu-
24 cation and related services for

1 which the local educational agen-
2 cy requests such consent; and

3 “(bb) the local educational
4 agency shall not be required to
5 convene an IEP meeting or de-
6 velop an IEP under this section
7 for the child for the special edu-
8 cation and related services for
9 which the local educational agen-
10 cy requests such consent.

11 “(iii) CONSENT FOR WARDS OF THE
12 STATE.—

13 “(I) IN GENERAL.—If the child is
14 a ward of the State and is not resid-
15 ing with the child’s parent, the agency
16 shall make reasonable efforts to ob-
17 tain the informed consent from the
18 parent (as defined in section 602) of
19 the child for an initial evaluation to
20 determine whether the child is a child
21 with a disability.

22 “(II) EXCEPTION.—The agency
23 shall not be required to obtain in-
24 formed consent from the parent of a
25 child for an initial evaluation to deter-

1 mine whether the child is a child with
2 a disability if—

3 “(aa) despite reasonable ef-
4 forts to do so, the agency cannot
5 discover the whereabouts of the
6 parent of the child;

7 “(bb) the rights of the par-
8 ents of the child have been termi-
9 nated in accordance with State
10 law; or

11 “(cc) the rights of the par-
12 ent to make educational decisions
13 have been subrogated by a judge
14 in accordance with State law and
15 consent for an initial evaluation
16 has been given by an individual
17 appointed by the judge to rep-
18 resent the child.

19 “(E) RULE OF CONSTRUCTION.—The
20 screening of a student by a teacher or specialist
21 to determine appropriate instructional strate-
22 gies for curriculum implementation shall not be
23 considered to be an evaluation for eligibility for
24 special education and related services.

25 “(2) REEVALUATIONS.—

1 “(A) IN GENERAL.—A local educational
2 agency shall ensure that a reevaluation of each
3 child with a disability is conducted in accord-
4 ance with subsections (b) and (c)—

5 “(i) if the local educational agency de-
6 termines that the educational or related
7 services needs, including improved aca-
8 demic achievement and functional perform-
9 ance, of the child warrant a reevaluation;
10 or

11 “(ii) if the child’s parents or teacher
12 requests a reevaluation.

13 “(B) LIMITATION.—A reevaluation con-
14 ducted under subparagraph (A) shall occur—

15 “(i) not more frequently than once a
16 year, unless the parent and the local edu-
17 cational agency agree otherwise; and

18 “(ii) at least once every 3 years, un-
19 less the parent and the local educational
20 agency agree that a reevaluation is unnec-
21 essary.

22 “(b) EVALUATION PROCEDURES.—

23 “(1) NOTICE.—The local educational agency
24 shall provide notice to the parents of a child with a
25 disability, in accordance with subsections (b)(3),

1 (b)(4), and (c) of section 615, that describes any
2 evaluation procedures such agency proposes to con-
3 duct.

4 “(2) CONDUCT OF EVALUATION.—In con-
5 ducting the evaluation, the local educational agency
6 shall—

7 “(A) use a variety of assessment tools and
8 strategies to gather relevant functional, develop-
9 mental, and academic information, including in-
10 formation provided by the parent, that may as-
11 sist in determining—

12 “(i) whether the child is a child with
13 a disability; and

14 “(ii) the content of the child’s individ-
15 ualized education program, including infor-
16 mation related to enabling the child to be
17 involved in and progress in the general
18 education curriculum, or, for preschool
19 children, to participate in appropriate ac-
20 tivities;

21 “(B) not use any single measure or assess-
22 ment as the sole criterion for determining
23 whether a child is a child with a disability or
24 determining an appropriate educational pro-
25 gram for the child; and

1 “(C) use technically sound instruments
2 that may assess the relative contribution of cog-
3 nitive and behavioral factors, in addition to
4 physical or developmental factors.

5 “(3) ADDITIONAL REQUIREMENTS.—Each local
6 educational agency shall ensure that—

7 “(A) assessments and other evaluation ma-
8 terials used to assess a child under this
9 section—

10 “(i) are selected and administered so
11 as not to be discriminatory on a racial or
12 cultural basis;

13 “(ii) are provided and administered in
14 the language and form most likely to yield
15 accurate information on what the child
16 knows and can do academically, develop-
17 mentally, and functionally, unless it is not
18 feasible to so provide or administer;

19 “(iii) are used for purposes for which
20 the assessments or measures are valid and
21 reliable;

22 “(iv) are administered by trained and
23 knowledgeable personnel; and

1 “(v) are administered in accordance
2 with any instructions provided by the pro-
3 ducer of such assessments;

4 “(B) the child is assessed in all areas of
5 suspected disability;

6 “(C) assessment tools and strategies that
7 provide relevant information that directly as-
8 sists persons in determining the educational
9 needs of the child are provided; and

10 “(D) assessments of children with disabil-
11 ities who transfer from 1 school district to an-
12 other school district in the same academic year
13 are coordinated with such children’s prior and
14 subsequent schools, as necessary and as expedi-
15 tiously as possible, to ensure prompt completion
16 of full evaluations.

17 “(4) DETERMINATION OF ELIGIBILITY AND
18 EDUCATIONAL NEED.—Upon completion of the ad-
19 ministration of assessments and other evaluation
20 measures—

21 “(A) the determination of whether the
22 child is a child with a disability as defined in
23 section 602(3) and the educational needs of the
24 child shall be made by a team of qualified pro-

1 professionals and the parent of the child in accord-
2 ance with paragraph (5); and

3 “(B) a copy of the evaluation report and
4 the documentation of determination of eligibility
5 shall be given to the parent.

6 “(5) SPECIAL RULE FOR ELIGIBILITY DETER-
7 MINATION.—In making a determination of eligibility
8 under paragraph (4)(A), a child shall not be deter-
9 mined to be a child with a disability if the deter-
10 minant factor for such determination is—

11 “(A) lack of appropriate instruction in
12 reading, including in the essential components
13 of reading instruction (as defined in section
14 1208(3) of the Elementary and Secondary Edu-
15 cation Act of 1965);

16 “(B) lack of instruction in math; or

17 “(C) limited English proficiency.

18 “(6) SPECIFIC LEARNING DISABILITIES.—

19 “(A) IN GENERAL.—Notwithstanding sec-
20 tion 607(b), when determining whether a child
21 has a specific learning disability as defined in
22 section 602, a local educational agency shall not
23 be required to take into consideration whether
24 a child has a severe discrepancy between
25 achievement and intellectual ability in oral ex-

1 pression, listening comprehension, written ex-
2 pression, basic reading skill, reading com-
3 prehension, mathematical calculation, or mathe-
4 matical reasoning.

5 “(B) ADDITIONAL AUTHORITY.—In deter-
6 mining whether a child has a specific learning
7 disability, a local educational agency may use a
8 process that determines if the child responds to
9 scientific, research-based intervention as a part
10 of the evaluation procedures described in para-
11 graphs (2) and (3).

12 “(c) ADDITIONAL REQUIREMENTS FOR EVALUATION
13 AND REEVALUATIONS.—

14 “(1) REVIEW OF EXISTING EVALUATION
15 DATA.—As part of an initial evaluation (if appro-
16 priate) and as part of any reevaluation under this
17 section, the IEP Team and other qualified profes-
18 sionals, as appropriate, shall—

19 “(A) review existing evaluation data on the
20 child, including—

21 “(i) evaluations and information pro-
22 vided by the parents of the child;

23 “(ii) current classroom-based, local, or
24 State assessments, and classroom-based
25 observations; and

1 “(iii) observations by teachers and re-
2 lated services providers; and

3 “(B) on the basis of that review, and input
4 from the child’s parents, identify what addi-
5 tional data, if any, are needed to determine—

6 “(i) whether the child is a child with
7 a disability as defined in section 602(3),
8 and the educational needs of the child, or,
9 in case of a reevaluation of a child, wheth-
10 er the child continues to have such a dis-
11 ability and such educational needs;

12 “(ii) the present levels of academic
13 achievement and related developmental
14 needs of the child;

15 “(iii) whether the child needs special
16 education and related services, or in the
17 case of a reevaluation of a child, whether
18 the child continues to need special edu-
19 cation and related services; and

20 “(iv) whether any additions or modi-
21 fications to the special education and re-
22 lated services are needed to enable the
23 child to meet the measurable annual goals
24 set out in the individualized education pro-
25 gram of the child and to participate, as ap-

1 appropriate, in the general education cur-
2 riculum.

3 “(2) SOURCE OF DATA.—The local educational
4 agency shall administer such assessments and other
5 evaluation measures as may be needed to produce
6 the data identified by the IEP Team under para-
7 graph (1)(B).

8 “(3) PARENTAL CONSENT.—Each local edu-
9 cational agency shall obtain informed parental con-
10 sent, in accordance with subsection (a)(1)(D), prior
11 to conducting any reevaluation of a child with a dis-
12 ability, except that such informed parental consent
13 need not be obtained if the local educational agency
14 can demonstrate that it had taken reasonable meas-
15 ures to obtain such consent and the child’s parent
16 has failed to respond.

17 “(4) REQUIREMENTS IF ADDITIONAL DATA ARE
18 NOT NEEDED.—If the IEP Team and other qualified
19 professionals, as appropriate, determine that no ad-
20 ditional data are needed to determine whether the
21 child continues to be a child with a disability and to
22 determine the child’s educational needs, the local
23 educational agency—

24 “(A) shall notify the child’s parents of—

1 “(i) that determination and the rea-
2 sons for the determination; and

3 “(ii) the right of such parents to re-
4 quest an assessment to determine whether
5 the child continues to be a child with a dis-
6 ability and to determine the child’s edu-
7 cational needs; and

8 “(B) shall not be required to conduct such
9 an assessment unless requested to by the child’s
10 parents.

11 “(5) EVALUATIONS BEFORE CHANGE IN ELIGI-
12 BILITY.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), a local educational agency
15 shall evaluate a child with a disability in ac-
16 cordance with this section before determining
17 that the child is no longer a child with a dis-
18 ability.

19 “(B) EXCEPTION.—

20 “(i) IN GENERAL.—The evaluation de-
21 scribed in subparagraph (A) shall not be
22 required before the termination of a child’s
23 eligibility under this part due to gradua-
24 tion from secondary school with a regular
25 diploma, or due to exceeding the age eligi-

1 bility for a free appropriate public edu-
2 cation under State law.

3 “(ii) SUMMARY OF PERFORMANCE.—

4 For a child whose eligibility under this
5 part terminates under circumstances de-
6 scribed in clause (i), a local educational
7 agency shall provide the child with a sum-
8 mary of the child’s academic achievement
9 and functional performance, which shall in-
10 clude recommendations on how to assist
11 the child in meeting the child’s postsec-
12 ondary goals.

13 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

14 “(1) DEFINITIONS.—In this title:

15 “(A) INDIVIDUALIZED EDUCATION PRO-
16 GRAM.—

17 “(i) IN GENERAL.—The term ‘individ-
18 ualized education program’ or ‘IEP’ means
19 a written statement for each child with a
20 disability that is developed, reviewed, and
21 revised in accordance with this section and
22 that includes—

23 “(I) a statement of the child’s
24 present levels of academic achieve-

1 ment and functional performance,
2 including—

3 “(aa) how the child’s dis-
4 ability affects the child’s involve-
5 ment and progress in the general
6 education curriculum;

7 “(bb) for preschool children,
8 as appropriate, how the disability
9 affects the child’s participation in
10 appropriate activities; and

11 “(cc) for children with dis-
12 abilities who take alternate as-
13 sessments aligned to alternate
14 achievement standards, a descrip-
15 tion of benchmarks or short-term
16 objectives;

17 “(II) a statement of measurable
18 annual goals, including academic and
19 functional goals, designed to—

20 “(aa) meet the child’s needs
21 that result from the child’s dis-
22 ability to enable the child to be
23 involved in and make progress in
24 the general education curriculum;
25 and

1 “(bb) meet each of the
2 child’s other educational needs
3 that result from the child’s dis-
4 ability;

5 “(III) a description of how the
6 child’s progress toward meeting the
7 annual goals described in subclause
8 (II) will be measured and when peri-
9 odic reports on the progress the child
10 is making toward meeting the annual
11 goals (such as through the use of
12 quarterly or other periodic reports,
13 concurrent with the issuance of report
14 cards) will be provided;

15 “(IV) a statement of the special
16 education and related services and
17 supplementary aids and services,
18 based on peer-reviewed research to the
19 extent practicable, to be provided to
20 the child, or on behalf of the child,
21 and a statement of the program modi-
22 fications or supports for school per-
23 sonnel that will be provided for the
24 child—

1 “(aa) to advance appro-
2 priately toward attaining the an-
3 nual goals;

4 “(bb) to be involved in and
5 make progress in the general
6 education curriculum in accord-
7 ance with subclause (I) and to
8 participate in extracurricular and
9 other nonacademic activities; and

10 “(cc) to be educated and
11 participate with other children
12 with disabilities and nondisabled
13 children in the activities de-
14 scribed in this subparagraph;

15 “(V) an explanation of the ex-
16 tent, if any, to which the child will not
17 participate with nondisabled children
18 in the regular class and in the activi-
19 ties described in subclause (IV)(cc);

20 “(VI)(aa) a statement of any in-
21 dividual appropriate accommodations
22 that are necessary to measure the
23 academic achievement and functional
24 performance of the child on State and

1 districtwide assessments consistent
2 with section 612(a)(16)(A); and

3 “(bb) if the IEP Team deter-
4 mines that the child shall take an al-
5 ternate assessment on a particular
6 State or districtwide assessment of
7 student achievement, a statement of
8 why—

9 “(AA) the child cannot par-
10 ticipate in the regular assess-
11 ment; and

12 “(BB) the particular alter-
13 nate assessment selected is ap-
14 propriate for the child;

15 “(VII) the projected date for the
16 beginning of the services and modi-
17 fications described in subclause (IV),
18 and the anticipated frequency, loca-
19 tion, and duration of those services
20 and modifications; and

21 “(VIII) beginning not later than
22 the first IEP to be in effect when the
23 child is 16, and updated annually
24 thereafter—

1 “(aa) appropriate measur-
2 able postsecondary goals based
3 upon age appropriate transition
4 assessments related to training,
5 education, employment, and,
6 where appropriate, independent
7 living skills;

8 “(bb) the transition services
9 (including courses of study) need-
10 ed to assist the child in reaching
11 those goals; and

12 “(cc) beginning not later
13 than 1 year before the child
14 reaches the age of majority under
15 State law, a statement that the
16 child has been informed of the
17 child’s rights under this title, if
18 any, that will transfer to the
19 child on reaching the age of ma-
20 jority under section 615(m).

21 “(ii) RULE OF CONSTRUCTION.—
22 Nothing in this section shall be construed
23 to require—

24 “(I) that additional information
25 be included in a child’s IEP beyond

1 what is explicitly required in this sec-
2 tion; and

3 “(II) the IEP Team to include
4 information under 1 component of a
5 child’s IEP that is already contained
6 under another component of such
7 IEP.

8 “(B) INDIVIDUALIZED EDUCATION PRO-
9 GRAM TEAM.—The term ‘individualized edu-
10 cation program team’ or ‘IEP Team’ means a
11 group of individuals composed of—

12 “(i) the parents of a child with a dis-
13 ability;

14 “(ii) not less than 1 regular education
15 teacher of such child (if the child is, or
16 may be, participating in the regular edu-
17 cation environment);

18 “(iii) not less than 1 special education
19 teacher, or where appropriate, not less
20 than 1 special education provider of such
21 child;

22 “(iv) a representative of the local edu-
23 cational agency who—

24 “(I) is qualified to provide, or su-
25 pervise the provision of, specially de-

1 signed instruction to meet the unique
2 needs of children with disabilities;

3 “(II) is knowledgeable about the
4 general education curriculum; and

5 “(III) is knowledgeable about the
6 availability of resources of the local
7 educational agency;

8 “(v) an individual who can interpret
9 the instructional implications of evaluation
10 results, who may be a member of the team
11 described in clauses (ii) through (vi);

12 “(vi) at the discretion of the parent or
13 the agency, other individuals who have
14 knowledge or special expertise regarding
15 the child, including related services per-
16 sonnel as appropriate; and

17 “(vii) whenever appropriate, the child
18 with a disability.

19 “(C) IEP TEAM ATTENDANCE.—

20 “(i) ATTENDANCE NOT NECESSARY.—

21 A member of the IEP Team shall not be
22 required to attend an IEP meeting, in
23 whole or in part, if the parent of a child
24 with a disability and the local educational
25 agency agree that the attendance of such

1 member is not necessary because the mem-
2 ber's area of the curriculum or related
3 services is not being modified or discussed
4 in the meeting.

5 “(ii) EXCUSAL.—A member of the
6 IEP Team may be excused from attending
7 an IEP meeting, in whole or in part, when
8 the meeting involves a modification to or
9 discussion of the member's area of the cur-
10 riculum or related services, if—

11 “(I) the parent and the local edu-
12 cational agency consent to the excusal;
13 and

14 “(II) the member submits, in
15 writing to the parent and the IEP
16 Team, input into the development of
17 the IEP prior to the meeting.

18 “(iii) WRITTEN AGREEMENT AND
19 CONSENT REQUIRED.—A parent's agree-
20 ment under clause (i) and consent under
21 clause (ii) shall be in writing.

22 “(D) IEP TEAM TRANSITION.—In the case
23 of a child who was previously served under part
24 C, an invitation to the initial IEP meeting
25 shall, at the request of the parent, be sent to

1 the part C service coordinator or other rep-
2 resentatives of the part C system to assist with
3 the smooth transition of services.

4 “(2) REQUIREMENT THAT PROGRAM BE IN EF-
5 FECT.—

6 “(A) IN GENERAL.—At the beginning of
7 each school year, each local educational agency,
8 State educational agency, or other State agen-
9 cy, as the case may be, shall have in effect, for
10 each child with a disability in the agency’s ju-
11 risdiction, an individualized education program,
12 as defined in paragraph (1)(A).

13 “(B) PROGRAM FOR CHILD AGED 3
14 THROUGH 5.—In the case of a child with a dis-
15 ability aged 3 through 5 (or, at the discretion
16 of the State educational agency, a 2-year-old
17 child with a disability who will turn age 3 dur-
18 ing the school year), the IEP Team shall con-
19 sider the individualized family service plan that
20 contains the material described in section 636,
21 and that is developed in accordance with this
22 section, and the individualized family service
23 plan may serve as the IEP of the child if using
24 that plan as the IEP is—

25 “(i) consistent with State policy; and

1 “(ii) agreed to by the agency and the
2 child’s parents.

3 “(C) PROGRAM FOR CHILDREN WHO
4 TRANSFER SCHOOL DISTRICTS.—

5 “(i) IN GENERAL.—

6 “(I) TRANSFER WITHIN THE
7 SAME STATE.—In the case of a child
8 with a disability who transfers school
9 districts within the same academic
10 year, who enrolls in a new school, and
11 who had an IEP that was in effect in
12 the same State, the local educational
13 agency shall provide such child with a
14 free appropriate public education, in-
15 cluding services comparable to those
16 described in the previously held IEP,
17 in consultation with the parents until
18 such time as the local educational
19 agency adopts the previously held IEP
20 or develops, adopts, and implements a
21 new IEP that is consistent with Fed-
22 eral and State law.

23 “(II) TRANSFER OUTSIDE
24 STATE.—In the case of a child with a
25 disability who transfers school dis-

1 tricts within the same academic year,
2 who enrolls in a new school, and who
3 had an IEP that was in effect in an-
4 other State, the local educational
5 agency shall provide such child with a
6 free appropriate public education, in-
7 cluding services comparable to those
8 described in the previously held IEP,
9 in consultation with the parents until
10 such time as the local educational
11 agency conducts an evaluation pursu-
12 ant to subsection (a)(1), if determined
13 to be necessary by such agency, and
14 develops a new IEP, if appropriate,
15 that is consistent with Federal and
16 State law.

17 “(ii) TRANSMITTAL OF RECORDS.—To
18 facilitate the transition for a child de-
19 scribed in clause (i)—

20 “(I) the new school in which the
21 child enrolls shall take reasonable
22 steps to promptly obtain the child’s
23 records, including the IEP and sup-
24 porting documents and any other
25 records relating to the provision of

1 special education or related services to
2 the child, from the previous school in
3 which the child was enrolled, pursuant
4 to section 99.31(a)(2) of title 34,
5 Code of Federal Regulations; and

6 “(II) the previous school in which
7 the child was enrolled shall take rea-
8 sonable steps to promptly respond to
9 such request from the new school.

10 “(3) DEVELOPMENT OF IEP.—

11 “(A) IN GENERAL.—In developing each
12 child’s IEP, the IEP Team, subject to subpara-
13 graph (C), shall consider—

14 “(i) the strengths of the child;

15 “(ii) the concerns of the parents for
16 enhancing the education of their child;

17 “(iii) the results of the initial evalua-
18 tion or most recent evaluation of the child;

19 and

20 “(iv) the academic, developmental,
21 and functional needs of the child.

22 “(B) CONSIDERATION OF SPECIAL FAC-
23 TORS.—The IEP Team shall—

24 “(i) in the case of a child whose be-
25 havior impedes the child’s learning or that

1 of others, consider the use of positive be-
2 havioral interventions and supports, and
3 other strategies, to address that behavior;

4 “(ii) in the case of a child with limited
5 English proficiency, consider the language
6 needs of the child as such needs relate to
7 the child’s IEP;

8 “(iii) in the case of a child who is
9 blind or visually impaired, provide for in-
10 struction in Braille and the use of Braille
11 unless the IEP Team determines, after an
12 evaluation of the child’s reading and writ-
13 ing skills, needs, and appropriate reading
14 and writing media (including an evaluation
15 of the child’s future needs for instruction
16 in Braille or the use of Braille), that in-
17 struction in Braille or the use of Braille is
18 not appropriate for the child;

19 “(iv) consider the communication
20 needs of the child, and in the case of a
21 child who is deaf or hard of hearing, con-
22 sider the child’s language and communica-
23 tion needs, opportunities for direct commu-
24 nications with peers and professional per-
25 sonnel in the child’s language and commu-

1 nication mode, academic level, and full
2 range of needs, including opportunities for
3 direct instruction in the child's language
4 and communication mode; and

5 “(v) consider whether the child needs
6 assistive technology devices and services.

7 “(C) REQUIREMENT WITH RESPECT TO
8 REGULAR EDUCATION TEACHER.—A regular
9 education teacher of the child, as a member of
10 the IEP Team, shall, to the extent appropriate,
11 participate in the development of the IEP of
12 the child, including the determination of appro-
13 priate positive behavioral interventions and sup-
14 ports, and other strategies, and the determina-
15 tion of supplementary aids and services, pro-
16 gram modifications, and support for school per-
17 sonnel consistent with paragraph (1)(A)(i)(IV).

18 “(D) AGREEMENT.—In making changes to
19 a child's IEP after the annual IEP meeting for
20 a school year, the parent of a child with a dis-
21 ability and the local educational agency may
22 agree not to convene an IEP meeting for the
23 purposes of making such changes, and instead
24 may develop a written document to amend or
25 modify the child's current IEP.

1 “(E) CONSOLIDATION OF IEP TEAM MEET-
2 INGS.—To the extent possible, the local edu-
3 cational agency shall encourage the consolida-
4 tion of reevaluation meetings for the child and
5 other IEP Team meetings for the child.

6 “(F) AMENDMENTS.—Changes to the IEP
7 may be made either by the entire IEP Team or,
8 as provided in subparagraph (D), by amending
9 the IEP rather than by redrafting the entire
10 IEP. Upon request, a parent shall be provided
11 with a revised copy of the IEP with the amend-
12 ments incorporated.

13 “(4) REVIEW AND REVISION OF IEP.—

14 “(A) IN GENERAL.—The local educational
15 agency shall ensure that, subject to subpara-
16 graph (B), the IEP Team—

17 “(i) reviews the child’s IEP periodi-
18 cally, but not less frequently than annu-
19 ally, to determine whether the annual goals
20 for the child are being achieved; and

21 “(ii) revises the IEP as appropriate to
22 address—

23 “(I) any lack of expected
24 progress toward the annual goals and

1 in the general education curriculum,
2 where appropriate;

3 “(II) the results of any reevalua-
4 tion conducted under this section;

5 “(III) information about the
6 child provided to, or by, the parents,
7 as described in subsection (c)(1)(B);

8 “(IV) the child’s anticipated
9 needs; or

10 “(V) other matters.

11 “(B) REQUIREMENT WITH RESPECT TO
12 REGULAR EDUCATION TEACHER.—A regular
13 education teacher of the child, as a member of
14 the IEP Team, shall, consistent with paragraph
15 (1)(C), participate in the review and revision of
16 the IEP of the child.

17 “(5) MULTI-YEAR IEP DEMONSTRATION.—

18 “(A) PILOT PROGRAM.—

19 “(i) PURPOSE.—The purpose of this
20 paragraph is to provide an opportunity for
21 States to allow parents and local edu-
22 cational agencies the opportunity for long-
23 term planning by offering the option of de-
24 veloping a comprehensive multi-year IEP,
25 not to exceed 3 years, that is designed to

1 coincide with the natural transition points
2 for the child.

3 “(ii) AUTHORIZATION.—In order to
4 carry out the purpose of this paragraph,
5 the Secretary is authorized to approve not
6 more than 15 proposals from States to
7 carry out the activity described in clause
8 (i).

9 “(iii) PROPOSAL.—

10 “(I) IN GENERAL.—A State de-
11 siring to participate in the program
12 under this paragraph shall submit a
13 proposal to the Secretary at such time
14 and in such manner as the Secretary
15 may reasonably require.

16 “(II) CONTENT.—The proposal
17 shall include—

18 “(aa) assurances that the
19 development of a multi-year IEP
20 under this paragraph is optional
21 for parents;

22 “(bb) assurances that the
23 parent is required to provide in-
24 formed consent before a com-

1 prehensive multi-year IEP is de-
2 veloped;

3 “(cc) a list of required ele-
4 ments for each multi-year IEP,
5 including—

6 “(AA) measurable goals
7 pursuant to paragraph
8 (1)(A)(i)(II), coinciding with
9 natural transition points for
10 the child, that will enable
11 the child to be involved in
12 and make progress in the
13 general education cur-
14 riculum and that will meet
15 the child’s other needs that
16 result from the child’s dis-
17 ability; and

18 “(BB) measurable an-
19 nual goals for determining
20 progress toward meeting the
21 goals described in subitem
22 (AA); and

23 “(dd) a description of the
24 process for the review and revi-

1 sion of each multi-year IEP,
2 including—

3 “(AA) a review by the
4 IEP Team of the child’s
5 multi-year IEP at each of
6 the child’s natural transition
7 points;

8 “(BB) in years other
9 than a child’s natural transi-
10 tion points, an annual re-
11 view of the child’s IEP to
12 determine the child’s current
13 levels of progress and wheth-
14 er the annual goals for the
15 child are being achieved, and
16 a requirement to amend the
17 IEP, as appropriate, to en-
18 able the child to continue to
19 meet the measurable goals
20 set out in the IEP;

21 “(CC) if the IEP Team
22 determines on the basis of a
23 review that the child is not
24 making sufficient progress
25 toward the goals described

1 in the multi-year IEP, a re-
2 quirement that the local
3 educational agency shall en-
4 sure that the IEP Team car-
5 ries out a more thorough re-
6 view of the IEP in accord-
7 ance with paragraph (4)
8 within 30 calendar days; and
9 “(DD) at the request of
10 the parent, a requirement
11 that the IEP Team shall
12 conduct a review of the
13 child’s multi-year IEP rath-
14 er than or subsequent to an
15 annual review.

16 “(B) REPORT.—Beginning 2 years after
17 the date of enactment of the Individuals with
18 Disabilities Education Improvement Act of
19 2004, the Secretary shall submit an annual re-
20 port to the Committee on Education and the
21 Workforce of the House of Representatives and
22 the Committee on Health, Education, Labor,
23 and Pensions of the Senate regarding the effec-
24 tiveness of the program under this paragraph

1 and any specific recommendations for broader
2 implementation of such program, including—

3 “(i) reducing—

4 “(I) the paperwork burden on
5 teachers, principals, administrators,
6 and related service providers; and

7 “(II) noninstructional time spent
8 by teachers in complying with this
9 part;

10 “(ii) enhancing longer-term edu-
11 cational planning;

12 “(iii) improving positive outcomes for
13 children with disabilities;

14 “(iv) promoting collaboration between
15 IEP Team members; and

16 “(v) ensuring satisfaction of family
17 members.

18 “(C) DEFINITION.—In this paragraph, the
19 term ‘natural transition points’ means those pe-
20 riods that are close in time to the transition of
21 a child with a disability from preschool to ele-
22 mentary grades, from elementary grades to
23 middle or junior high school grades, from mid-
24 dle or junior high school grades to secondary
25 school grades, and from secondary school

1 grades to post-secondary activities, but in no
2 case a period longer than 3 years.

3 “(6) FAILURE TO MEET TRANSITION OBJEC-
4 TIVES.—If a participating agency, other than the
5 local educational agency, fails to provide the transi-
6 tion services described in the IEP in accordance with
7 paragraph (1)(A)(i)(VIII), the local educational
8 agency shall reconvene the IEP Team to identify al-
9 ternative strategies to meet the transition objectives
10 for the child set out in the IEP.

11 “(7) CHILDREN WITH DISABILITIES IN ADULT
12 PRISONS.—

13 “(A) IN GENERAL.—The following require-
14 ments shall not apply to children with disabil-
15 ities who are convicted as adults under State
16 law and incarcerated in adult prisons:

17 “(i) The requirements contained in
18 section 612(a)(16) and paragraph
19 (1)(A)(i)(VI) (relating to participation of
20 children with disabilities in general assess-
21 ments).

22 “(ii) The requirements of items (aa)
23 and (bb) of paragraph (1)(A)(i)(VIII) (re-
24 lating to transition planning and transition
25 services), do not apply with respect to such

1 children whose eligibility under this part
2 will end, because of such children's age,
3 before such children will be released from
4 prison.

5 “(B) ADDITIONAL REQUIREMENT.—If a
6 child with a disability is convicted as an adult
7 under State law and incarcerated in an adult
8 prison, the child's IEP Team may modify the
9 child's IEP or placement notwithstanding the
10 requirements of sections 612(a)(5)(A) and
11 paragraph (1)(A) if the State has demonstrated
12 a bona fide security or compelling penological
13 interest that cannot otherwise be accommo-
14 dated.

15 “(e) EDUCATIONAL PLACEMENTS.—Each local edu-
16 cational agency or State educational agency shall ensure
17 that the parents of each child with a disability are mem-
18 bers of any group that makes decisions on the educational
19 placement of their child.

20 “(f) ALTERNATIVE MEANS OF MEETING PARTICIPA-
21 TION.—When conducting IEP team meetings and place-
22 ment meetings pursuant to this section, section 615(e),
23 and section 615(f)(1)(B), and carrying out administrative
24 matters under section 615 (such as scheduling, exchange
25 of witness lists, and status conferences), the parent of a

- 1 child with a disability and a local educational agency may
- 2 agree to use alternative means of meeting participation,
- 3 such as video conferences and conference calls.